UNIVERSITA' DEGLI STUDI DI TORINO

Department of **Economia e Statistica Cognetti de Martiis**

PhD Programme:

Comparative Analysis of Institutions, Economics and Law

Cycle XXXIV

Behind the economy of money laundering: Empirical applications drawing Economics and Law

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Academic Years: **2018/2019- 2019/2020- 2020/2021**

Academic Field: **SECS-P/06**, **IUS/05**

ACKNOWLEDGEMENTS

I would like to offer my special thanks to my Supervisor, Prof. Matteo Migheli who believed in me from the beginning, who guided and supported me in this research.

I am also grateful to the Coordinator of this PhD Programme, Prof. Giovanni Ramello and to the egregious Commission in the persons of Prof. Donato Masciandaro and Prof. Anna Maria Maugeri.

In addition, I would also like to extend my thanks to the academic journals that have accepted to publish two of the three papers included in this work: The *Journal of money laundering control*[1] and *Il Nuovo Diritto delle Società*[2].

[1] In course of publication- Accepted on 08/2021) Oliva, M. (2021) Money laundering, Food activities and Mafia: evidences from the Italian provinces. *Journal of money laundering control*, Emerald Publishing.

[2] Oliva, M. (2021) The role of intermediaries in anti-money laundering regimes: a comparison between Italy and the United States. *Nuovo Diritto delle Società*, Giappichelli Editore, Torino, Italy, (1) 10, pp 1637-1660. The journal has been acknowledged as A class by Anvur VQR rating.

INTRODUCTION

CHAPTER 1.

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INTRODUCTION

According to the INTERPOL, money laundering is: "any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources". This phenomenon in its own definition provides the existence of a crime that comes before the action to launder money because, to do that, one should have the necessity to convert illegal proceeds. Not coincidentally, the VI anti-money laundering European Directive, still not transposed in many member States, has introduced a list of twenty predicate offences linked to money laundering.

The aim of this thesis is to analyse the main determinants of money laundering and the correlation between this crime and other criminal activities that represent its driver.

Moreover, considering the results obtained from empirical applications, the intent is to give a contribution to the academic literature linked to this field, but also to convey insights for new anti-money laundering policies.

According to this purpose, the analysis has been articulated in three parts: two of them carried out following the economic literature and using empirical applications; another section developed according the juridical implications linked to the crime in object.

Along this line, the first chapter studies the correlation between money laundering and the environmental crimes. Indeed, this latter offence ties with illegal financial transactions, a pillar of the fight against money laundering. In this regard, the Italian Customs Agency states that "a qualifying aspect of the fight against transnational illegal waste, appears to be related to the implementation of operational models that link the product flows at risk of suspicious money laundering reports, to reveal and prohibit irregular financial flows[3]".

The objective is therefore to follow legal waste streams to track down the illegal ones. According to this reasoning, the aim of this analysis is to understand the mechanisms that connect money laundering and the waste crimes in the Italian provinces, over the period 2010-2018, also looking at the geographical implications of these two crimes, using a Spatial Autoregressive Model (SAR). In addition, the analysis will attempt at understanding whether the introduction of the crucial European anti-money laundering Directive (2015/849/EC) had some effects on these crimes.

Looking at the results of the first chapter it has been evident that money laundering constitutes a crucial challenge for international governments and authorities but also the crucial role of the entities

3 Pergolizzi, A (2015), p.80.

obliged to report suspicious transactions and particularly the financial and non-financial intermediaries. This is the reason why this work comes up with a second chapter that studies the juridical guidelines against money laundering taking a critical approach to this issue. The intention of this part is to go through the anti-money laundering regulation underling the duties of financial and non-financial intermediaries.

The analysis focuses on two entities with different legal systems: Italy, that follows the guideline of the European Union, and the United States. The aim of the work is to understand the crucial points of these regulations by making a comparison between the two, and also looking at the differences between these systems in the action to solve a specific case of study in which it is involved a non-financial intermediary. Along this line, the case US vs Campbell (1989) has allowed to verify how the US legislation acted and in which way a country of the European Union, specifically, Italy, would have acted in this case.

Finally, Chapter 3. takes up the economic analysis in order to provide a specific study on the link between apparently legal activities (food and beverage), the Mafia type associations and money laundering; a link that has so far been analysed mainly on a theoretical level.

The aim of this part is to investigate this correlation in the Italian provinces, by looking at annual data over the period 2010 to 2018 and using a balanced panel data following the instrumental variables approach. The analysis includes both fixed and random effects, as well as robustness checks. The main findings of this paper reveal that, in most Italian provinces, money launderers are deterred by the probability of being identified. In particular, the deterrent action of police and investigative forces seem to be very effective.

Moreover, the empirical results show that mafia-type organisations and food activities are positively correlated with money laundering and, for this reason, this part provides several insights in terms of policy implications.

CHAPTER 1. Money laundering and illegal trafficking of waste: evidence from the Italian provinces

1.1. Introduction

Money laundering is an offence made by white collars (Nagel and Weiman, 2015; Ngai, 2012), an illegal process linked to people who are perfectly integrated in the business circuit and well-educated, as this crime requires not only specific, but also complex methodologies (Smith and Papachristos, 2016). In spite of these characteristics, which may render this crime riskier because easy to detect, it has been growing fast over time (Schneider and Windischbauer, 2008); however, there would be no dirty money to launder in absence of illegal activities that produce it (Barone and Masciandaro, 2011). Schneider (2010) quantifies the turnover of illegal activities worldwide and lists several crimes that are sources of money to launder. Among these drugs, theft, illegal trade of weapons and burglary are the activities generating the largest flows of illegal money. According to McDowell (2006) money laundering "provides the fuel for drug dealers, terrorists, illegal arms dealers, corrupt public officials, and others to operate and expand their criminal enterprises[4]". It is for this reason that the anti-money laundering fight represents a crucial component also to contrast crimes in general. Moreover, the author underlines that the probability that money laundering activity will increase in the years to come is high and positive. Indeed, the technological development and the process of globalization has provided to money laundering the possibility to easily invade different circuits and countries.

Several studies and police investigations have documented (Scaglione, 2016; Europol, 2013) that mafia clans in Italy have been massively involved in money laundering, entering markets such as public/private construction, waste disposal, leisure industries, the renewable energy sector and many other kinds of businesses. Reganati and Oliva (2018), in their empirical study on Italian regions between 2008 and 2013, show that the incidence of mafia is one of the main determinants of money laundering. Ardizzi et al. (2018) show a high and positive correlation between extortions and cash anomalies in Italian provinces; as the authors stress, extortion is a crime typical of Italian mafias, so suggesting that, where mafias are more rooted and powerful, more cash anomalies are detected.

Levi (2018) adds environmental crimes to the aforementioned list of delinquencies that nurture money laundering. The author notices that, until recent years, laws did not regard them as key

[4] McDowell, J. (2006), p.1.

sources of dirty money, but as emerging environmental threats that may only incidentally create illegal financial flows. Indeed, many environmental crimes (e.g. poaching)) generally benefit a person (who often committed it) with no monetary return (Schmidt, 2004. However, others (such as waste trafficking) engender large quantities of (dirty) money both at national and international level, therefore requiring laundering.

While environmental crimes are widely studied in both the legal (Maul et al., 2017) and economics (Ruggiero, 2020) literatures, the extant studies have paid few attentions to the link between environmental crimes and their consequences on money laundering. Walters (2013) and Sergi and South (2016) recall that this type of crime is more common in areas, where organised criminality (e.g. Italian mafias) operates a wide arrays of different activities and institutions are weak, in the sense that they do not enforce strong controls on economic (illegal) activities. In such frameworks, criminal organisations are able to expand their businesses to the environmental sphere, so producing large flows of dirty money that need laundering. Italian "Terra dei Fuochi"[5] is a typical case of such a crime: Camorra (the Naples-based mafia) used several fields in an area of Southern Italy to illegally burn toxic waste (D'Alisa et al., 2017).

Pergolizzi and Reganati (2015) examine the main socio-economic determinants of the illegal trafficking of waste in the Italian regions, also verifying the role of the enforcement in the reduction of this crime. The authors show that the level of education of people is positive correlated with the illegal trafficking of waste. This result is explained by the fact that this is an economic crime for which a high level of education seems to be a necessary condition for criminals. Moreover, Vannucci (2013) shows that the criminal network involved in environmental crimes involves a vast array of entrepreneurs, mediators, contractors, professional career managers and elected officials, thus going beyond the borders of organised crime. In other words, there are subjects, external to the criminal organisation, which take part in illegal waste trafficking, as some entrepreneurs find resorting to criminality more convenient than using official channels for the disposal of (toxic) waste. The author also confirms the negative correlation between the strength of political and administrative institutions and the diffusion of environmental crimes. Almer and Goeschl (2015) study crimes related to waste disposal in a sample of 44 countries and show that, while the enforcement of the laws that punish environmental crimes is effective in reducing the phenomenon, it depends also on regional political economy characteristics. In particular, illegal disposal correlate positively with regional GDP and total revenues of industrial activities.

[5] This toponym (literally "land of fires") identifies an area of Southern Italy, located in the provinces of Naples and Caserta, where Camorra was used to burn waste illegally collected and stored.

Of course, the law forbids illegal waste management, demanding the enforcement to the police and the appropriate administrative bodies. However, with respect to this, D'Amato and Zoli (2012) highlight that there is positive but nonlinear relationship between the efforts of inspections and the number of crimes linked to waste; the authors find also that increasing the cost of legal waste disposal increases criminal activities in the sector. Germani et al. (2015) show a hump shaped relation between the efforts to contrast the illegal trafficking of waste and the crime itself. It means that the influence of law enforcement on the illegal trafficking of waste only affect criminal activities up to a certain threshold and the deterrence effect on criminal actions can only be achieved to such a level. The European Union started the normative work to contrast this crime in 1990 and only in the 2015, through the so called IV European anti-money laundering Directive (2015/849/EC), an exhaustive and stricter regulation has been achieved. However, this is a legislative provision that the member States has transposed years later, like the case of Italy that has signed the implementation in the 2017. In any case, the fourth Directive has imprinted a significant change in the anti- money laundering regulation laying the foundation for the last two European Directive anti-money laundering. One of these bases is represented by the obligations to report suspicious transactions.

Indeed, the analysis of the suspicious transactions has allowed in the years to better profile money launderers and also identify the transactions linked to the original criminal activity that has generate the illegal proceeds. But an excess of these kind operations could have also some negative effects. According to a study conducted by E. Takáts for the International Monetary Fund (IMF), it is possible to provide how should be also dangerous an excess of reports guided by fear of reprisals. Through the so called "Crying Wolf Theory" this economist has provided that as in the famous storytelling, if someone scream "Alarm!" too much times, also superficially and without having a verified reason, when the danger is true, nobody believes him more. The model elaborated by Takáts has the objective of demonstrating how, in the fight against money laundering, with reference to the reports of suspicious transactions, the quality of these reports is more relevant than the total amount of them. On the other hand, Dalla Pellegrina et al. (2020) starting from the evidence that an increase of the suspicious operations reported reduces the vulnerability (ML police reports/population) to money laundering, come up with two possible explanations of this result. The first one refers to a positive effect in terms of deterrence, instead the second explains the outcomes considering the possibility for which an over-reporting of suspicious operations increase the inefficiency of the investigation authorities. The analysis of the suspicious transactions has allowed in the years to better profile money launderers, but an excess of regulation and punishment could have also some negative effects.

Using data on Italian money laundering and waste-related crimes, this paper studies the link between the second and the first crime, claiming that a causal nexus between the two exists. In particular, the hypothesis under test is that provinces, in which waste crimes are more diffused, feature larger diffusion of money laundering. In addition, the empirical analysis will attempt at understanding whether the introduction of the aforementioned European regulation had some effect on the crimes analysed in the paper. Indeed, the European Union approved the Directive 2008/99 of the European Council introducing an array of environmental crimes among the criminal offences of interest for the Union. Italy has implemented this measure in 2011 with the Dlgs n. 121, even if it had already introduced some norms punishing illegal waste disposal in 2006. Finally, the Italian Government updated the Penal Code introducing new norms on environmental crimes in 2015.

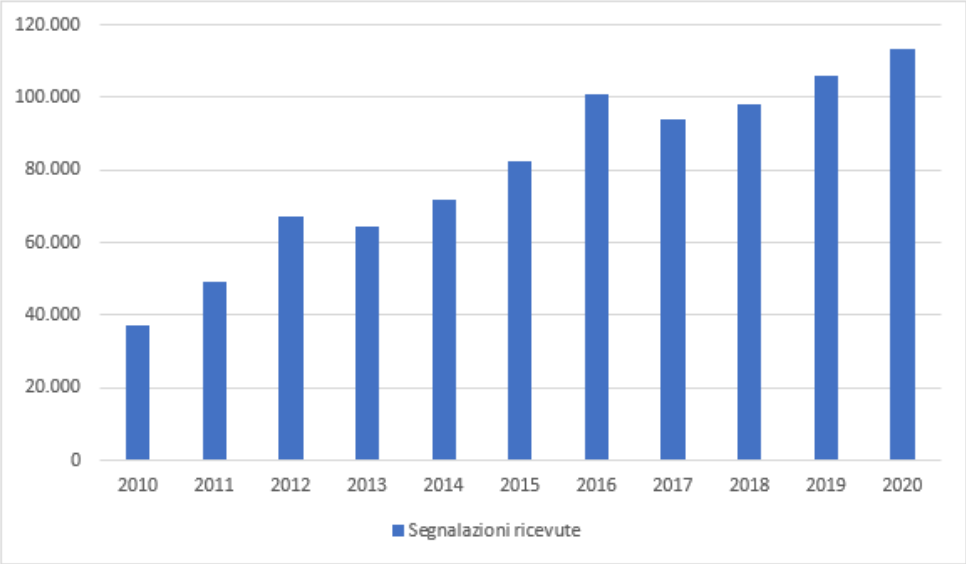
1.2. Money laundering and illegal trafficking of waste in Italy.

According to the "Rapporto di mutua valutazione Italia" (Ministry of Economy and Finance, Financial Action Task Force, 2015) Italy is a Country that has invested a lot in the fight against money laundering, building a robust system of contrast. However, the huge amount of illegal proceeds (amounting to about 12% of the Italian GDP in 2015) generated by the organised criminality in the country represents a major obstacle to the enforcement of the legislation. The same report provides some data on the contribution of different crimes to the flows of dirty money; the third place is taken by ìcorruption, fraud, counterfeiting, environmental crime, theft/rapid, smuggling, extortion and illegal gambling (about 10% of total revenue).

Considering 2020, the *Unità d'Informazione Finanziaria* (UIF thereafter)[6] recorded 113,187 suspicious transactions reported, 7,398 more than the previous year (UIF, 2021); a result also achieved thanks to the widening of the categories of reporting entities (V European Anti-Money Laundering Directive 2018/843). Also, the exchange of information with the Judicial Authorities and the Investigative Bodies is increasing, as well as the strengthening of the relations of collaboration between the FIU and the international FIUs. Figure 1. summarises the trend of suspicious transactions recorded by the UIF over the last ten years.

[6] This is the national intelligence unit charged of fighting financial crimes, from money laundering to financial flows linked to terrorism.

FIGURE 1. REPORTS OF SUSPICIOUS TRANSACTIONS RECORDED BY THE UIF.

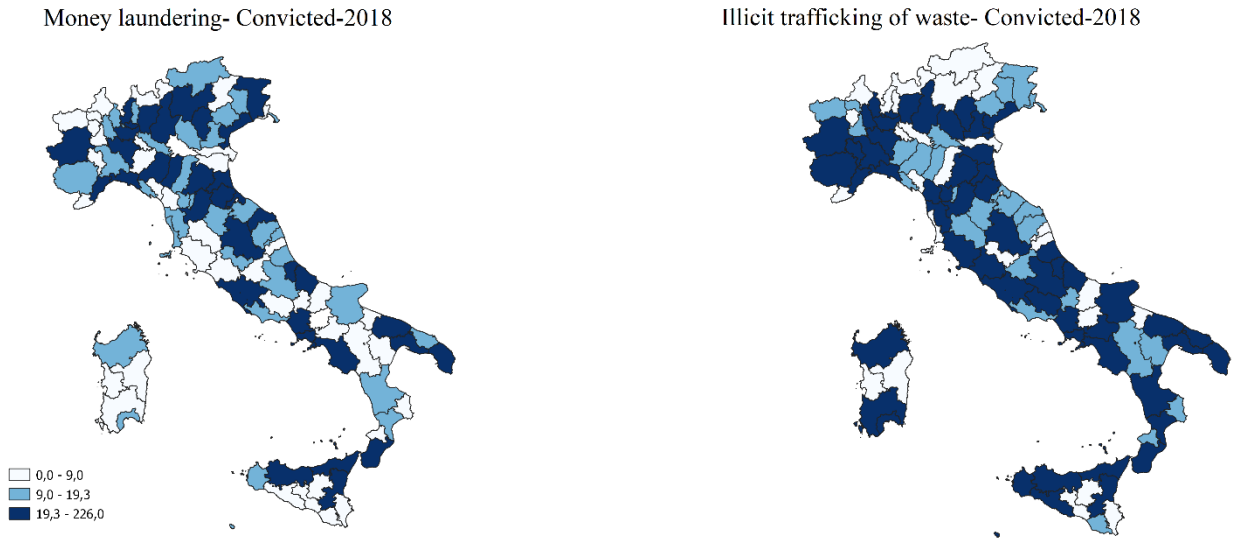


Source Data: UIF (2021)

The report "Ecomafia 2019" (Legambiente, 2019) has shown that between 2002 and 2019, 459 investigations for illegal trafficking of waste were concluded. Almost 54 million tonnes of waste, mainly industrial sludge and special waste containing metallic materials, were seized. Campania dominates the regional ranking of environmental illegalities with 3,862 offences (14. 4% of the national total), followed by Calabria (3,240), Puglia (2,854) and Sicily (2,641). Tuscany is, after Lazio which recorded just over 2,000 crimes, the second region of Central Italy for number of crimes (1,836), followed by the most affected northern region, Lombardy. The province with the highest number of offences is Naples (1,360), followed by Rome (1,037), Bari (711), Palermo (671) and Avellino (667).

Figure 2 shows a comparison between the number of convictions per 100,000 inhabitants for money laundering and convictions per 100,000 inhabitants for illegal trafficking of waste. Looking at these maps, a positive correlation between the two variables seems to emerge. The Italian Customs Agency (Pergolizzi, 2015) states that a strong link between illegal trafficking of waste and money laundering exists.

FIGURE 2: PEOPLE CONVICTED FOR MONEY LAUNDERING AND ILLICIT TRAFFICKING OF WASTE (CONVICTIONS PER 100,000 INHABITANTS).



Source Data: ISTAT (2019)

In the light of the extant literature and the data shown in Figure 2, two hypotheses are formulated and then tested empirically in the next sections of the paper. The prevalence of money laundering presented in the figures is consistent with that of cash anomalies presented by Ardizzi et al. (2018).

Hypothesis 1: More illegal trafficking of waste leads, ceteris paribus, to a higher rate of money laundering.

Hypothesis 2: A stronger impact of the crime rate leads, ceteris paribus, to a higher rate of money laundering.

1. 3. Data and methodology

The previous hypotheses will be tested by considering the 107 Italian provinces over the period 2010-2018 using a spatial autoregressive model (SAR), both without and with instrumental variables. The dependent variable is the money laundering rate, *ML Rate*, which is the number of money laundering crimes reported to the judicial authorities per 100,000 resident population (ISTAT, 2019). Such a measure may be imperfect, as money laundering, being illegal, tries to be invisible; however, the number of reports is nonetheless useful as a proxy for the magnitude of the phenomenon (Masciandaro, 1998 and 2000 and Ardizzi et al., 2014). The predictors considered are: i) *Waste Convicted*, the number of people convicted for illegal treatment, disposal and trafficking of waste per

100,000 resident population (ISTAT, 2019); ii) the level of the crime rate, *Crime Rate* (ISTAT, 2019) Indeed, criminals may be assumed as rational investors (Gilmour, 2016 and Dalla Pellegrina et al., 2020); as such, they will invest in illegal activities only if it is more convenient than choosing legal alternatives. Deterrence and, in particular, its effectiveness plays a crucial role in determining such a convenience. Moreover, to address the deterrent effect on criminal behaviour, the analysis uses the variable *Clearance*, that is the ratio of money laundering crimes committed by persons known to all recorded money laundering crimes and *ML Conviction*, the number of convicted defendants for money laundering crime by a final judgment to all recorded money laundering crimes. Furthermore, the regressions control also for the unemployment rate (ISTAT, 2019) at provincial level (*Unemployment*). Table A. (Appendix A.1) summarises all the variables above mentioned.

Estimates are obtained using spatial autoregressive (SAR) techniques to account for the characteristics of the data. On the one hand, organised criminality is persistent over time, as it tends to reproduce itself, especially in areas where it has been historically rooted. The case of Italian mafias is particularly exemplificative of such a phenomenon (Sciarrone, 2009; Sciarrone and Storti, 2014 and Allum et al., 2019), also as a consequence of the relationships existing between mafias and civil society (Sciarrone, 2010). On the other hand, while organised criminality affects some Italian provinces more than others, inter-provincial spillovers are possible, especially across provincial borders: criminality is likely to expand across provincial borders, although criminal organisations may form cartels to divide up the territory (Fiorentini and Peltzman, 1995). Indeed, Willis (1983) had already shown that, in England and Wales, crime rates feature spatial correlation, due to similarities of some variables (such as unemployment rates) across contiguous regions. For these reasons SAR estimation seem the best methodology. With particular reference to Italian provinces, Ardizzi et al., (2018) show that contiguous provinces present similar rates of cash anomalies, suggesting that inter-provincial spillovers are possible.

Waste Convicted may however be endogenous, as provinces where laundering money is easier, may induce more criminals to operate there. Consequently, IV-SAR is used to account for this possible problem. The instrument chosen is the urbanisation rate at provincial level, provided by ISTAT. In facts, Gillis (1996), Bisi and Buscemi (2004) and Malik (2016) show that criminality tends to concentrate in urbanised areas, as there the opportunities of illegal operations and gains are more than in other areas. *Urbanisation* is uncorrelated with the money laundering rate (Pearson correlation coefficient equal to 0.201[7])

[7] The more the value is close to zero and away from -1 and 1, the weaker the correlation will be.

It is noteworthy that in 2017 Italy ratified the European Directive 2015/849/EC, which contains specific rules on fighting money laundering. Such a discontinuity with respect to the previous legislation may have had consequences both in terms of detections and number of crimes committed. For this reason, the analyses consider dummies variables, considering the value 0 for years before 2017 and 1 for years after.

For the sake of robustness, the estimations presented in the next section regress the money laundering rate on either the number of waste-related crimes (per 100,000 inhabitants)[8] or that of people convicted for committing such crimes. The reason behind this choice is that the number of convicted might underestimate the real dimension of the phenomenon, as often criminals remain unpunished. For these estimations, in order to check for robustness of deterrence measure, has been used the variable (*Uif*), instead of *Clearance*, that is the ratio of suspicious transactions reported to the Italian FIU over the total of money laundering crimes (UIF, 2019). While we expect a positive correlation between the number of the convicted and that of crimes, Tables A2, A3 and A4 show that it is not very high (around 0.4), suggesting that the two variables may lead to different results. Such a correlation is, however, not surprising. Indeed, illegal money may come either from the activities of criminal organisations or those of individual criminals (such as thieves). In the first case, large amounts of illegal proceeds are generated by relatively few people; in the second, instead, there is higher correlation between the number of (small) crimes and that of money launderings. Table 1 shows the descriptive statistics for the variables considered in both the estimations. Moreover, tables 2 and 3 present correlation matrices for the same variables linked to the two analyses.

TABLE 1 DESCRIPTIVE STATISTICS OF THE VARIABLES USED

Variable	***Obs***	***Mean***	***Std. Dev.***	***Min***	***Max***
ML Rate	954	4.754	11.253	0	122.824
Crime Rate	954	3850.751	1140.257	0	8482.3
Waste Convicted	954	8.294	12.107	0	131.877
Waste Crimes	954	39.188	67.278	0.092	756.095
Uif	954	104.301	235.398	0	4273
ML Conviction	954	1.131	1.791	0	18
Clearance	954	0.597	0.736	0	14
Unemployment	954	0.111	0.055	0.026	0.314

[8] Source: ISTAT.

TABLE 2 CORRELATION MATRIX (1)

	ML Rate	*Crime Rate*	*Waste Crimes*	*Uif*	*ML Conviction*	*Unemployment*
ML Rate	1.000					
Crime Rate	0.237	1.000				
Waste Crimes	0.411	0.051	1.000			
Uif	-0.117	-0.042	-0.058	1.000		
ML Conviction	-0.098	-0.076	0.018	0.154	1.000	
Unemployment	0.111	-0.201	0.296	-0.065	-0.045	1.000

TABLE 3 CORRELATION MATRIX (2)

	ML Rate	*Crime Rate*	*Waste Convicted*	*Clearance*	*ML Conviction*	*Unemployment*
ML Rate	1.000					
Crime Rate	0.237	1.000				
Waste Convicted	0.447	0.065	1.000			
Clearance	-0.042	-0.008	0.109	1.000		
ML Conviction	-0.098	-0.076	0.078	0.444	1.000	
Unemployment	0.111	-0.201	0.102	0.120	-0.045	1.000

In this section the study implements a crime model that posits a relationship between the annual reported crime in each province and a set of explanatory variables. The basic econometric specifications, for both the models considered, is given by the following equations:

$$ML\ Rate_{it} = \beta 0 + \beta 1 Crime\ Rate_{it} + \beta 2\ Clearance_{it} + \beta 3\ ML\ Conviction_{it} + \beta 4 Waste\ Convicted_{it} + \\ + \beta 5 Unemployment_{it} + Year_t + \varepsilon_i \quad (1)$$

$$ML\ Rate_{it} = \beta 0 + \beta 1 Crime\ Rate_{it} + \beta 2\ Uif_{it} + \beta 3\ ML\ Conviction_{it} + \beta 4 Waste\ Crimes_{it} + \\ + \beta 5 Unemployment_{it} + Year_t + \varepsilon_i \quad (2)$$

where the subscripts $_i$ and $_t$ represent province and year respectively. $Prov_i$ are a set of provincial fixed effects, while time fixed effects are introduced with dummies $Year_t$ to capture possible shocks which may influence all provinces in a given year. In particular, the analysis uses the year dummies to determine if there are some shocks considering the period before and after the main European Directive anti-money laundering.

The spatial regression model has been chosen to describe the relationship between the independent variables and the dependent variable by involving location effect of the data, like spatial diffusion, spillover, interaction, and dispersal processes. In this regard, Table 4 shows the results of the Moran's index associated to each variable considered in the principal model. In the case of *ML Rate* and *Uif*, the p-value shows that the test is not significant, so it is possible to affirm that the phenomenon described by this variable is restricted to each single province that it represents. On the other hand, for all the other variables considered, the table of Moran's indexes (Moran's I) allows to reject the null hypothesis of zero spatial autocorrelation. Therefore, it is possible to affirm that in these cases the phenomena represented by these variables have effects not only in a single province, but also in the surrounding areas. In particular, the table shows that the values of *I* are greater than those of *E* (expected index) and that the values of *z* are positive. This means that the existent autocorrelation is a positive spatial autocorrelation.

TABLE 4 VALUES OF MORAN'S TEST

Variables	***I***	***E(I)***	***sd(I)***	***z***	***p-value***
ML Rate	-0.010	-0.001	0.007	-1.209	0.113
Crime Rate	0.175	-0.001	0.007	23.556	0.000
Waste Crimes	0.198	-0.001	0.007	27.310	0.000
Waste Convicted	0.084	-0.001	0.007	11.567	0.000
ML Conviction	0.020	-0.001	0.007	2.863	0.002
Uif	0.003	-0.001	0.007	0.527	0.299
Clearance	0.054	-0.001	0.007	7.851	0.000
Unemployment	0.601	-0.001	0.007	80.412	0.000

1.4. Results

Table 5 presents the results of SAR estimations, when the phenomenon of waste-related crimes is measured using the number of convicted people per 100,000 inhabitants. The analyses highlight a positive and statistically significant relationship between the two variables of interest: as the number of people (per 100,000 inhabitants) convicted for waste-related crimes increases, so does the money laundering rate. This result suggests that, as the other criminal activities, also those related to waste disposal and treatment generate financial flows that need "cleaning".

TABLE 5 MONEY LAUNDERING AND CONVICTIONS FOR WASTE-RELATED CRIMES
SAR 2010/2018- SAR IV 2010/2018[9]

ML Rate	***SAR (1)***	***SAR (2)***	***SAR (3)***	***SAR IV (1)***	***SAR IV (2)***	***SAR IV (3)***
Crime Rate	0.002*** (0.000)	0.002*** (0.000)	0.002*** (0.000)	0.002*** (0.000)	0.002*** (0.000)	0.002*** (0.000)
Waste Convicted	0.403*** (0.026)	0.400*** (0.026)	0.404*** (0.026)	1.288*** (0.130)	1.309*** (0.134)	1.324*** (0.135)
Clearance	-	-1.577** (0.001)	-0.505** (0.196)	-	-3.033*** (0.678)	-2.084*** (0.743)
Unemployment	-	25.789*** (5.848)	23.747*** (5.885)	-	4.263 (3.297)	0.514 (0.496)
Conviction	-	-	-1.019** (0.480)	-		-0.873*** (0.302)
Constant	-6.523*** (1.127)	-5.014*** (1.156)	-8.633*** (1.433)	-11.505*** (1.808)	-10.380*** (2.119)	-9.103*** (2.171)
Year Dummies	Yes	Yes	Yes	Yes	Yes	Yes
Prob>F	0.000	0.000	0.000	-	-	-
Wald chi2	-	-	-	129.63	144.42	145.33
Prob>chi2	-	-	-	0.000	0.000	0.000
Pseudo R2	-	-	-	0.218	0.227	0.231
Obs	954	954	954	954	954	954

The next table presents regressions that are analogous to those shown in Table 6, but measure the incidence of waste-related crimes as the number of such offenses detected by investigative police. The reason behind the use of this variable is that the responsible of a crime may never be discovered, nor, therefore, convicted. Consequently, the number of people convicted may underestimate the phenomenon of illegal waste management. However, if the hypothesis that such a crime produces illegal monetary flows that are then laundered is correct, the coefficient of the variable capturing the number of crimes should keep the sign and the statistical significance of the previous variable of interest. This is, indeed, what emerges from Table 6: the relationship between waste-related crimes and money laundering offenses is positive and statistically significant. As the number of crimes detected is larger than that of people convicted, the coefficient is larger in this than in the previous case.

[9] ***, **, * indicate statistical significance at the 1, 5 and 10 percent levels. Table 5.1 also includes robustness checks.

TABLE 6 MONEY LAUNDERING AND NUMBER OF WASTE-RELATED CRIMES. SAR 2010/2018- SAR IV 2010/2018-[10]

ML Rate	***SAR (1)***	***SAR (2)***	***SAR (3)***	***SAR IV (1)***	***SAR IV (2)***	***SAR IV (3)***
Crime Rate	0.002*** (0.000)	0.002*** (0.000)	0.002*** (0.000)	0.002*** (0.000)	0.002*** (0.000)	0.002*** (0.000)
Waste Crimes	0.100*** (0.004)	0.101*** (0.04)	0.102*** (0.004)	0.148*** (0.009)	0.149*** (0.009)	1.151*** (0.009)
Uif	-	-0.003*** (0.001)	-0.002** (0.001)	-	-0.003*** (0.001)	-0.002** (0.001)
Unemployment	-	-6.886 (5.408)	-8.103 (5.387)	-	-25.351*** (6.619)	-27.287*** (6.636)
Conviction	-	-	-0.551*** (0.156)	-	-	-0.641*** (0.167)
Constant	-7.011*** (0.989)	-5.512*** (1.267)	-4.558*** (1.288)	-8.343*** (1.081)	-4.134*** (1.365)	-2.986** (1.397)
Year Dummies	Yes	Yes	Yes	Yes	Yes	Yes
Prob>F	0.000	0.000	0.000			-
Wald chi2	-	-	-	321.75	367.87	379.36
Prob>chi2	-	-	-	0.000	0.000	0.000
Pseudo R2	-	-	-	0.410	0.413	0.421
Obs	954	954	954	954	954	954

In both sets of regressions (i.e. in both the previous tables), the efficiency of the police forces to fight against criminality has the expected effect of decreasing the occurrence of money laundering. Unemployment was expected to be positively correlated with money laundering. The expected sign is observed in Table 5, suggesting that, in areas where unemployment is high, people tend to enter criminality more easily. However, such a result is not robust to the use of instrumental variables. Instead, in Table 6 we observe the opposite result: in IV regressions a negative association between money laundering and unemployment emerges. While such a result is opposite to the initial hypothesis, a possible explanation exists: provinces with high levels of unemployment are likely characterised by low levels of income and economic activity than areas where unemployment is lower. Consequently, the also the opportunities of laundering money may be scarcer in provinces characterised by high levels of unemployment. Nevertheless, from these areas organised criminality may be able to hire workforce, which is then directed to other – more economically active – provinces.

[10] ***, **, * indicate statistical significance at the 1, 5 and 10 percent levels. Table 5.1 also includes robustness checks.

Overall, the results presented in this section confirm the initial hypothesis: waste-related crimes are responsible for an increase in the number of crimes that involve money laundering.

1.5. Policy implications

According to the results of the Moran index, the phenomenon of illegal trafficking of waste affects not only the area, where waste is collected (the Italian provinces in this paper), but also those in the neighbourhood, as the most of times illegally trafficked waste is transported to other areas, not only in the same country. The issue is that, for the laws that fight against to this crime to be applied, these illegal activities must be identified, what becomes easier as the number of signs left behind by criminals increases. Knowing that waste-related crimes are detectable also following money laundering might increase the chances of detecting illegal waste trafficking and disposals.

On the one hand, the evidence provided in the paper suggests that detecting money laundering may help individuating also waste-related crimes; on the other hand, it shows that the world of environmental crimes is strictly related to that of illegal money flows and their re-introduction in legal circuits. Therefore, fighting money laundering may be useful to decrease the number of environmental crimes for at least two reasons: first, if the cost of launder money increases, the crimes that generate illegal flows become less attractive (i.e. their yield decreases). Second, the identification of money laundering may lead to discover those who are responsible for waste-related crimes, so rendering the fight against them more effective. In other words, the double causality that links the two types of crimes analysed in this paper may help to increase the chances of detection of both by the police.

In general, an effective way to decrease criminal activities is to increase their cost either in economic terms (i.e. reducing their yield) or by limiting the personal freedom of those who commit crimes (through conviction). Therefore, police and judicial operations that effectively contrast money laundering may lead also to a decrease in environmental offences, in particular those related to illicit waste disposal and movements.

Another aspect to be considered, although not inquired in this paper, is the international aspect of waste-related crimes: often trafficking involves two or more countries, as waste originates in one, but is then illegally disposed in another, where controls are less strict or the legislation is still underdeveloped to allow an effective fight against this type of offences. This means that the illegal money generated by them may “appear” in a country different from that where the waste was collected. Such a phenomenon may render the link between money laundering and the environmental

crime more difficult to detect, or may protect the identities of at least some people involved in the criminal activity, so increasing the difficulty of dismantling the criminal organisations. Nevertheless, there is an aspect of such a phenomenon that may help the police: if waste is collected in a country and then illegally disposed in another, not only waste, but also money (i.e. the payment for the "service") must flow from the first to the second country. This could render the identification of the financial flow easier to detect, as large money transfers may be visible across country borders.

Conclusions

The present paper inquires into the relationship existing between waste-related crimes and money laundering. While the connection between criminality and money laundering is well-known and much evidence on it exists, the extant literature had not yet studied the link between inquired here. The initial hypothesis was that a positive relationship exists also in the case of waste-related crimes. Indeed, the data used in the empirical analyses confirm such a hypothesis, both when people convicted and number of offences are considered as a measure of money laundering activity at provincial level.

The results clearly show that the proceeds of crimes related to waste disposal or movements enter the circuit of money laundering, as the profits generated by other – more studied – offences related to drugs and weapons. While the traffic of these last items likely engenders huger monetary flows than waste-related crimes, the last are however relevant and, as the others, produce significant negative externalities, which increase the costs of the crimes themselves. Policy indications are provided, suggesting that fighting money laundering effectively should decrease the yield of such criminal activities, reducing their appeal and, therefore, the number of offences. In particular, the more costly laundering illegal money becomes, the more the small illegal operations (whose yield is lower) should be abandoned. However, the detection of large-scale crimes may be easier than that of those of small size. Nevertheless, the former may require more complex investigations than the latter, reducing the effectiveness of the police operations.

The main limitations of this study are linked to the absence of reliable data on crimes: as these are illegal, they are not recorded, and their true size may only be inferred using the number of convicted people and that of the offences discovered or reported. In addition, the peculiar situation of each region (i.e. the extent to which criminal organisations are present and operate) may render the police and the judicial system more or less focussed on environmental and waste-related crimes, endogenously affecting the quality of data. Nevertheless, empirical studies, as that proposed in this paper, may help better understanding the channels usable to fight against environmental crimes.

The analysis presented in this paper shows the existence of spillovers between provinces: waste may indeed cross the borders of provinces, as criminals can. The evidence proposed in this paper is limited to Italy, but the crime analysed often involves international criminal networks. Further research should focus on these, to understand the paths followed by the illegal proceeds generated by illegal waste disposal and movements. The action of national polices, indeed, may be insufficient to successfully fight these crimes in presence of organised transnational networks.

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CHAPTER 2. The role of intermediaries in anti-money laundering regimes: a comparison between Italy and the United States

2.1. Introduction

Illicit money flows are a huge threat for the integrity of international financial markets and for the entire economic system. The term *money laundering* originated in the United States where, during the 1920s, a new business was born: criminal organisations started buying commercial activities to launder illegal proceed [11].

In the following years, the criminal process of money laundering became increasingly sophisticated. The economic literature articulates it in three steps [12]: *placement*, through credit transfers and financial transactions; *layering*, the action of cancelling the origin of the dirty money; *integration*, the phase in which the illicit proceeds are reintroduced into the market through investments.

The step of *integration* particularly involves the role of financial and non-financial intermediaries who consciously, unconsciously or acting under the so-called *willful blindness*, help criminals in their investment of the illegal proceeds.

Italy, like the others European Countries, has implemented its legislation anti-money laundering according to the Community legislator. Thereof started its normative work in the field of money laundering from the first steps of the Union. Until 1990, the member States had not made effective contributions in this area, until the nascent community inevitably felt the need for a more defined approach to money laundering, since this crime was increasingly generating a huge global impact. In fact, their first intervention came in 1991 with the European Directive 91/308/EEC [13], whose scope of action was limited to controlling the financial and credit sectors, excluding non-financial intermediaries and professionals. Along this line, the first signal of change was the 2001/97/CE, the second Anti-Money Laundering Directive, that extends the obligation to report suspicious transactions also to other categories of subjects and companies. Moreover, only with the 2005/60/CE Directive and the integration of the forty FATF Recommendations specific to money laundering, stricter rules in this sense are implemented. Indeed, the so called fourth and fifth anti-money

[11] STAROLA, *Il riciclaggio nel D.Lgs. 231/2007. Notizie, ambito operativo e soggetti destinatari*, in questa *Rivista*, 2011, 28 ss.
[12] STAROLA, *Il riciclaggio nel D.Lgs. 231/2007*, cit., 28 ss.
[13] Council Directive 91/308/EEC *Prevention of the use of the financial system for the purpose of money laundering*, 1991.

laundering Directives emerged from that structure, completing their improvement with the last European Directive that will be enacted by 3 June 2021.

With reference to Italy, this country has transposed the five European Directives over the years through some specific Legislative Decrees. Moreover, the crime of money laundering also finds its place in the Italian penal Code and particularly in the articles 648, 648bis and 648ter [14].

The aim of this paper is to analyse the main features of the current anti-money laundering laws in Italy, according to the European Directives implemented, comparing this system with that of a Common Law entity, the United States, underlining the role of financial and non-financial institutions. This choice arises from the intention to show how Countries with different law systems are acting to contrast a common foe, both placing the responsibility on all the intermediaries, the agents and the business activities in case they are linked to money laundering operations. According to this aim, the case of United States has been also chosen because this Entity was one of first to legislate on money laundering at federal level. Along this line, the paper will try to answer the following research questions: i) What are the crucial points of these regulations? ii) What is the role of intermediaries and in which cases are they held responsible? iii) Are there some common grounds between the European and the US anti-money laundering legislations in this sense? iv) How would Italy solve a US money laundering case with reference to the involvement in crime of an estate agent?

2. 2. The U.S. regulatory anti-money laundering system

The regulatory anti-money laundering system in the United States saw its first effective action in the Bank Secrecy Act (enacted in 1970), even if the main provision in the normative discipline came about with the Money Laundering Control Act (1986), raised from the 18 USC Sections 1956 and 1957. In summary, its mandate is: «*i) Establish money laundering as a federal crime; ii) Prohibit structuring transactions to evade CTR (Currency Transaction Report) filings; iii) Introduce civil and criminal forfeiture for BSA (Bank Secrecy Act) violations; iv) Direct banks to establish and maintain procedures to ensure and monitor compliance with the reporting and record-keeping requirements of the BSA*» [15]. In general terms: «*Prosecutors can prove through circumstantial evidence that the defendant has no legitimate income; he is attempting to hide his relationship to the money or its*

[14] Cfr.: ACQUAROLI, *Il riciclaggio*, in VUGANÒ and PIERGALLINI (eds.), *Reati contro la persona e contro il patrimonio*, Torino, 2015; APOLLONIO, *L'introduzione dell'art. 648ter 1 c.p. e il superamento del criterio della specialità nel rapporto tra la ricettazione e i delitti di riciclaggio*, in *Cass. pen.*, 2890 ss.

[15] FINANCIAL CRIMES ENFORCEMENT NETWORK *History of Anti-Money Laundering Laws* available on: *https://www.fincen.gov/history-anti-money-laundering-laws*.

location; he has ties to illicit activities or is a public official whose salary is far less than the money involved [16]».

In order to elaborate on the details, some key-words of this discipline are: concealment, conspiracy, gatekeepers (or intermediaries) and international money laundering. The first concept is very important as it also demonstrates the effectiveness of the illegal action and means to cover up the source of the illegal proceeds. Instead, with regard to Conspiracy, the law intends that the Government should prove that: «(1) *there was an agreement between two or more persons to commit money laundering and (2) the defendant joined the agreement knowing its purpose and with the intent to further the illegal purpose* [17]». This action is often linked to international money laundering (1956, 2) and so the «*crime to transport, transmit (…) a monetary instrument or funds between the US and a place outside, knowing that the funds are proceeds of some form of unlawful activity and knowing that transfer is designed in part to conceal, the location, source, ownership or control of proceeds of SUA* [18]». However, in the well-structured illegal framework of money laundering, the role of the so-called *gatekeepers* is crucial. All the actions linked to this crime may involve not only the prime beneficiaries, but also people who can facilitate their activity. In order to do so, this potential aid used to be inserted into some specific circuits like financial and non-financial sectors or other institutional and business entities. Following this reasoning, the U.S. regulatory anti-money laundering system has introduced the punishable liability of *gatekeepers* who, by following a set of rules, are incentivised to cooperate with the Authorities. According to Gadinis and Mangels (2016): «*The desired overhaul came with the Annunzio-Wylie Anti-Money Laundering Act of 1992, which triggered the shift toward collaborative gatekeeping. Motivated by a foreign bank's collapse for assisting Colombian drug cartels launder money through its Miami offices, the Annunzio-Wylie Act paved the way for incorporating FATF's recommendations into U.S. law. Realizing that the overly simplistic reporting system of CTRs could not capture increasingly nuanced money laundering techniques, the Congress introduced suspicious activity reporting as a general requirement for all U.S. financial institutions. To implement the requirement, the Congress opted for a broad delegation to the Secretary of the Treasury, who was given the power to demand reports for any violation of law or regulation* [19]».

Another crucial law passed by the U.S. to contrast money laundering, the USA Patriot Act, was enacted in 2001 and implements and specifies the type of offences linked to money laundering that

[16] ARLEN, *Money Laundering*, Lecture Slides. Course in: *Business crime: U.S. enforcement against multinational corporations for corruption and fraud*, NHH reg524. Lecture, 2019, 5.
[17] ARLEN, *Money Laundering*, Lecture Slides, 22.
[18] ARLEN, *Money Laundering*, Lecture Slides, 15.
[19] GADINIS-MANGELS, *Collaborative Gatekeepers*, in *Washington and Lee Law Review*, 2016, 869.

are punishable by law. Even though Europe and the United States have different regulatory systems, they have both complied with the FATF (The Financial Action Task Force) Recommendations (first the U.S., then Europe), a significant action in contrasting this crime at a global level. In this regard, the mandate of the FATF, also jointed by the European Union, is to define some international standards on contrasting money laundering. These standards are articulated in seven sections that include different categories of Recommendations: i) policies and coordination; ii) money laundering and confiscation; iii) terrorist financing and financing of proliferation; iv) preventive measure(s); v) transparency and beneficial ownership of legal persons and arrangements; vi) power and responsibilities of component Authorities and other institutional measures; vii) international cooperation [20].

Furthermore, according to the Bill S.1241 (2017) [21], new rules for contrasting money laundering are also included, implementing the obligations of financial operators. One of the objectives in this sense is to prevent falsification by the beneficial owners of bank accounts, deposits or assets held in an account. The violation of money laundering rules involves: imprisonment for up to ten years, a fine of up to one million dollars, or both. There is also a punishment for those who hide the source of funds resulting from a transaction. Particular attention is also paid to the aforementioned *Principle of concealment*. Indeed, the 1956 (1) (2) [22] judgment states that concealment must involve a specific illegal activity; the monetary funds involved must represent the proceeds of some form of illegal activity and this act must be designed to conceal the nature of these proceeds. It is not always clear whether money laundering also requires the funds in question to be generated from proceeds of illegal activity or whether it is sufficient that the transport of these funds is organised for illegal activities. This ambiguity, unfortunately, has been left largely incomplete by the Courts.

Money laundering in the United States includes both complicity in the crime and the act of laundering dirty money at national and international levels, as well as the responsibility of the financial institutions that have the task of supervising. The Government, in order to defend itself and the markets, can increase the measures leading to detection of the risk even if it is not immediately able to discover the criminal activity and its specific proceeds. Draft Bill S. 1241 provides for the increase of controls on U.S. borders and customs checks, control of bearer blank cheques and also the

[20] Cfr. FATF, *International Standards on Combatting Money Laundering and the Financing of Terrorism & Proliferation*, 2012-2019.
[21] BILL S.1241, *Combating Money Laundering, Terrorist Financing, and Counterfeiting Act*, 115th Congress, 2017-2018. Available on: *https://www.congress.gov/bill/115th-congress/ senate-bill/1241/text.*
[22] *18 U.S. Code§ 1956. Laundering of monetary instruments*, in *Legal Information Institute of Cornell Law School*. Available on: *https://www.law.cornell.edu/uscode/text/18/1956*.

possibility for the Secret Services to investigate money laundering. This is a proposal made by Senators Grassley and Feinstein in order to strengthen the existing anti-money laundering legislation and harmonise it with the modern instruments of control.

The 1970 Section 18 of the U.S. Code imposed the maintenance of registers, the obligation to communicate the data collected by financial and non-financial entities (including banks, insurance companies, private banks, real estate agencies, travel agencies) as well as the obligation to provide law enforcement agencies with a paper trail to track financial transactions. It also obliged banks to report identifying information about those who deposit cash that exceeds the amount of $10,000 and gave the Treasury Authority the opportunity to investigate the compliance of the data contained in the registers (J. Arlen, 2019).

In addition, the 1957 Section regulates all those cases in which a person knowingly undertakes or attempts to undertake a monetary transaction deriving from criminal activities with a value of more than 10,000 dollars; the active subject of the crime is punished with imprisonment (not more than ten years), with a fine or both (J. Arlen, 2019). In short, it is possible to say that Sections §§1956 and 1957 provide for various money laundering scenarios. Section §1956 punishes money laundering transaction, money laundering transportation and sting operations with up to 20 years' imprisonment.

The first hypothesis concerns financial transactions carried out with the proceeds of offences in order to promote an illegal activity or to defraud the tax authorities, i.e. knowing that the transaction is carried out in order to conceal the illegal origin of the goods or to avoid reporting obligations of various kinds. But a crucial point is that, following this Section, the act of not reporting a seemingly suspicious case to the Authorities is also punishable.

The second hypothesis is integrated when transporting, transferring or transmitting monetary instruments across U.S. borders for the purpose of carrying out specific illegal activities, i.e. in the knowledge that the monetary instrument is the proceeds of illegal activities, and in the knowledge that such transport must serve to conceal the illegal origin of goods or evade reporting obligations.

The third occurs when financial transactions are carried out with goods that do not cost money, but are declared illegal by the authorities, with the aim of promoting an illegal activity, or to conceal the illegal origin of goods or avoid reporting obligations of various kinds.

Section §1957, on the other hand, punishes the execution of monetary transactions involving the proceeds from certain offences to the sum of $10,000. The monetary transaction, as specified by the same regulatory reference, may consist of a deposit, withdrawal, transfer or exchange of funds or monetary instruments, incidents of domestic or foreign trade. The penalty in this case is imprisonment

in federal prison for a maximum of 10 years and a fine of up to $250,000 or twice the value of the transaction made.

The most significant difference between Sections §§1956 and 1957 is shown by the fact that each of the three hypotheses made by the first section features the existence of a specific intent that the agent aims to achieve. Section §1957, on the other hand, does not require the occurrence of a specific purpose but provides the threshold value of $10,000, in addition to the requirement that a financial or a non-financial institution be involved in the transaction. In both cases, awareness of the criminal origin of the laundered proceeds is needed. The agent is not required to have knowledge of the specific criminal offence from which the funds are derived, but generalised knowledge of its illegality is sufficient.

The USA Patriot Act has been crucial also in order to lay the foundation of the most recent anti-money laundering law, the Anti-money laundering Act 2020. This Act raised with the intention to improve the anti-money laundering system looking at the new technologies and methods used by criminals in this circuit. Indeed, the modernisation of the regime has represented one of most important objectives of this law. In particular, the new plan provides to abolish all the obsolete regulations and guidance guaranteeing that the Financial Crimes Enforcement Network (FINCEN) will be able to face to the new technological environment used by criminals to launder money [23]. The upgrade in terms of technology and innovation refers also the control of virtual currency. Along this line it has been also established that money transmitters need to be registered in FINCEN [24].

Another important change refers to the introduction of stricter beneficial ownership requirements. Indeed, many criminals use to create shell companies in order to launder money inserting their illegal proceed in the legal market. With this new Act, also small firms are obliged to submit to the FINCEN all the specific information about their owners. The FINCEN collects all these information in a database, available only to the domestic and the international Authorities. In terms of penalties, the AML Act 2020 has also increased all those linked to the violations of the Bank Secrecy Act. In particular, Treasury can impose additional fines in the case of repeat BSA violations up to the greater of: three times the profit gained or loss avoided as a result of the violation or two times the maximum applicable penalty. Finally, the AMLA (§ 6312) has also introduces new rules in order to increment the domestic and the international cooperation among anti-money laundering Authorities, Institutions

[23] AMLA, § 6209.
[24] AMLA, § 6102.

and Agencies. This last point replies to the necessity of contrasting this crime also in its transnational forms.

2.3. The European scenario and the case of Italy

Within the European Union, the phenomenon of money laundering only became a concrete focus of attention for Governments and Authorities in the 1990s. Indeed, these are the years in which the first laws to contrast illicit money flows were enacted.

One of the weaknesses of anti-money laundering efforts at the European level is the difficulty of homogenising the regulatory scenario. This is a huge challenge, firstly because of the legal meaning of Directives *per se* which, by definition, do not provide a unitary legal instrument, but rather a framework that the member States can implement with other rules after the transposition. With regard to the strengths, on the other hand, the international cooperation between FIUs and anti-money laundering Authorities has played a very important role in the identification of suspicious transactions and operations [25]. Along this line, according to the EU Directive 2015/849, all member States should set up FIUs (Financial Intelligence Units that are independent and autonomous) in order to prevent and contrast money laundering. In addition, Europe complied with the FATF (The Financial Action Task Force) Recommendations which intend «*to set standards and to promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and the financing of proliferation, and other related threats to the integrity of the international financial system. In collaboration with other international stakeholders, the FATF also works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse* [26]». In all its modifications, the European anti-money laundering regime has erected as fundamental pillar the obligation to report suspicious transactions. However, the first anti–money laundering Directive (91/308/EEC) involved only financial entities in this obligation. Instead, with the second legislative intervention (2001/97/CE) the follow categories have been included: financial institutions and legal or natural persons acting in the exercise of their professional activities: auditors, external accountants and tax advisors; real estate agents; notaries and other independent legal professionals. Their obligations refers to the action of: (a) assisting in the planning or execution of transactions for their client concerning the (i) buying and selling of real property or business entities; (ii) managing of client money, securities or other assets; (iii) opening or management of

[25] UIF (UNITÀ DI INFORMAZIONE FINANZIARIA DELLA BANCA D'ITALIA, FINANCIAL INTELLIGENCE UNIT), *Annual Report*, 2019. Available on: *https://uif.bancaditalia.it/pubblicazioni/ rapporto-annuale/2019/Rapporto-UIF-anno-2018.pdf.*

[26] FATF, *The FATF Reccomendations*. Available on: *www.fatf-gafi.org*.

bank, savings or securities accounts; (iv) organisation of contributions necessary for the creation, operation or management of companies; (v) creation, operation or management of trusts, companies or similar structures; (b) or by acting on behalf of and for their client in any financial or real estate transaction.

Anyway, it is with the Fourth Directive 2015/849/EU that the Community Legislator has strengthened the anti-money laundering laws [27]. In order to understand which conducts are punishable in these terms, we should emphasise the meaning of this crime linked to the concept of intentionality. Along this line, money laundering includes:

«*The conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property (...)* [28]». However, it also comprises the purpose, and this is important in order to understand the role of prime beneficiaries and facilitators, «*of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person's action* [29]». The other action included refers to 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 criminal activity or from an act of participation in such an activity* [30]». Furthermore, the European Directive pays attention to one of the points that are most difficult to prove: «*the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such an activity* [31]». Following this reasoning, the sixth point of the first article is also very explanatory about the prosecution of subjects for this crime and the difficulty of identifying them. It affirms: «*Knowledge, intent or purpose required as an element of the activities (...) may be inferred from objective factual circumstances* [32]».

So, one could say that, according to European Union Law, the three pillars of money laundering are: conversion, concealment, promotion, conscious participation and objective factual circumstances. It is also important to emphasise the fact that there could be different categories of subjects involved in the same crime and this might be one of the reasons why the Community Legislator extended the

[27] Cfr.: BURATTI, *Segnalazioni sospette e investigazioni*, in DANOVI (edited by), *La nuova normativa antiriciclaggio e le professioni*, Milano, 2016; CERQUA, *Il delitto di riciclaggio nel sistema penale italiano*, in CAPPA-MORERA (eds.), *Normativa antiriciclaggio e segnalazione di operazioni sospette*, Bologna, 2007.
[28] Directive (EU) 2015/849 of the European Parliament and of the Council, *Official Journal of the European Union*, L 141/73, art. 1.
[29] Directive (EU) 2015/849, art. 1.
[30] Directive (EU) 2015/849, art. 1.
[31] Directive (EU) 2015/849, art. 1.
[32] Directive (EU) 2015/849, art. 1.

obligation to control and report suspicious transactions. In fact, one of the crucial points also of the so-called fourth Directive is related to the entities that are obliged to control and report suspicious transactions.

In this regard, the IV Directive has extended the list of subjects, including auditors, external accountants, independent legal professionals, trust or company service, providers of gambling activities.

When looking at risk assessment, the fourth European Directive obliges the entities in object to assist member States in order to «*identify, understand, manage and mitigate the risk of money laundering and terrorist financing, and to allow other stakeholders, including national legislators, the European Parliament, the ESAs, and representatives from FIUs to better understand the risks* [33]». In this sense, the European Union has also recognised the importance of supranational controls. Today, there are many Institutions responsible for monitoring and assessing risk, including the European Supervisory Authority, the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA). Furthermore, the Financial Action Task Force (FATF) has also required a more precise verification of the client's identity and paying attention to financial operations and transactions that occur in countries with a higher risk of this kind.

The need to identify, understand, manage and mitigate the risk of money laundering leads us to another main point of this Directive, namely, the beneficial owner [34] who may otherwise hide his or her identity behind a corporate structure, generating a misuse of legal entities.

«*The need for accurate and up-to-date information on the Member States should therefore ensure that entities incorporated (...) accurate and current information on their beneficial ownership, in addition to basic information such as the company name and address and proof of incorporation and legal ownership. (…) Member States should ensure that beneficial ownership information is stored in a central register located outside the company, in full compliance with Union law* [35]».

[33] Directive (EU) 2015/849, art. 6.

[34] Directive (EU) 2015/849, art. 3, affirms: «*beneficial owner means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least: (a) in the case of corporate entities: (i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information*».

[35] Directive (EU) 2015/849, Incipit.

In this sense, transparency is the key-word for contrasting the development of money laundering in the legal system through these kinds of circuits.

From these main pillars, the Fifth European Directive emerged in 2018. The Directive 2018/843 has further extended the list of entities obliged to report suspicious transactions. The subjects involved refer to: «*any other person that undertakes to provide, directly or by means of other persons to which that other person is related, material aid, assistance or advice on tax matters as principal business or professional activity; estate agents including when acting as intermediaries in the letting of immovable property, but only in relation to transactions for which the monthly rent amounts to EUR 10.000 or more; providers engaged in exchange services between virtual currencies and fiat currencies; custodian wallet providers; persons trading or acting as intermediaries in the trade of works of art, including when this is carried out by art galleries and auction houses, where the value of the transaction or a series of linked transactions amounts to EUR 10.000 or more; persons storing, trading or acting as intermediaries in the trade of works of art when this is carried out by free ports, where the value of the transaction or a series of linked transactions amounts to EUR 10.000 or more* [36]».

With regard to customer due diligence measures, the fifth Directive has amended art. 13 of the Fourth Directive including «*electronic identification means and trust services referred to in Regulation 910/2014/EU of the European Parliament and of the Council or other secure, regulated, recognized, approved or accepted remote or electronic identification procedures* [37]» in order to identify the customers and verify their identity. Another innovation concerns the possibility granted to the obligated parties to keep a record not only of the checks carried out to identify the beneficial owner, but also the reasons why he/she was not identified. With regard to PEPs (politically exposed persons), it has been stipulated that these persons should always be subject to enhanced due diligence measures, except where they act in their capacity as public administration bodies. In these cases, the obligated parties adopt procedures for the adequate verification of customers commensurate with the risk actually detected. The fifth Directive also established further ways of strengthening national and international cooperation between competent authorities. It has been transposed in Italy through Legislative Decree n. 125/2019, which has modified the d.lgs. 231/2007.

Moreover, the last intervention of the European Union against money laundering, currently being introduced in Italian legislation, comes from the VI EU Directive 2018/1673 in which most of the novelties follow the necessities also underlined by the AMLA 2020. It modifies the V EU Directive

[36] Directive (EU) 2018/843 of the European Parliament and of the Council, 2018.
[37] Directive (EU) 2018/843.

from art.1 to art.15. Firstly, it defines a specific list of 20 predicate offences linked to money laundering, like environmental crimes and cybercrimes [38]. Moreover, the VI EU Directive specifies like crimes linked to money laundering: «*(a) the conversion or transfer of assets, carried out with the knowledge that the assets are derived from an activity for the purpose of concealing or disguise the illicit origin of the property or of assisting any person involved in that activity to evade the legal consequences of their conduct; (b) concealment or concealment of the true nature, source, location, disposition, movement, ownership or rights in the property in the knowledge that the property originates from a criminal activity; (c) the purchase, possession or use of property in the knowledge, at the time of receipt, that the property are from criminal activity* [39]*. The Directive also includes aggravating circumstances and additional penalties for natural persons. But the true novelty refers to the punishment of legal persons* [40]» in accordance with the following procedures: «*(a) exclusion from entitlement to a public benefit or aid; (b) temporary or permanent exclusion from access to public funding, including tendering procedures, grants and concessions; (c) temporary or permanent disqualification from carrying on a commercial activity; (d) being subject to judicial supervision; (e) judicial winding-up measures; (f) temporary or permanent closure of premises used for the commission of the offence*».

In the Italian penal system, the crime of money laundering finds its place in the Second Book dedicated to crimes against property, precisely in art. 648-bis. Despite the existence of a common European Directive, each country also continues to have national instruments of repression. In the United States, on the other hand, anti-money laundering regulation has the benefit of being federal and so there is a more harmonious system. It is also true, however, that in the case of the European Union it would be difficult to devise law enforcement measures that were not affected by the characteristics of the various criminal justice systems and the different rules of criminal procedure. In Italy, money laundering legislation has been changed many times over the years. Unlike the US legal system, Italy has not been immediately able to grasp the teleological profile of the case, in particular with regard to its function «*to combat the perpetration of the offence as a possible context of origin of another offence* [41]». However, with the Decree Law 21st March, 1978, n. 59 (converted, with modifications, from Law 18th May, 1978, n. 191), on *Criminal and procedural regulations for the prevention and repression of serious crimes*, the national Legislator was the first to discipline wrongdoing and the criminal consequences connected to it in a complete manner. The weakness of

[38] Directive (EU) 2018/1673, art. 2.
[39] Directive (EU) 2018/1673, art. 3.
[40] Directive (EU) 2018/1673, art. 7.
[41] *Evoluzione storica della normativa sul reato di* riciclaggio, in *Exeo Edizioni*. Available on: *www.exeo.it*.

the first national version of money laundering lay in the fact that the criminalisation of money laundering was conditional on the money being derived from a closed category of predicate offences. However, the legislator omitted to indicate in the list some of the offences to which money laundering phenomena were most frequently linked, for example the production and trafficking of drugs or psychotropic drugs.

The emergence of money laundering in other countries and the growth of the worrying phenomenon of organized crime at a transnational level has determined a whole period dedicated to revising the form of the crime in question. With law n. 55 of 19 March 1990, the so-called Gava-Vassalli, the entire structure of the offence was modified, first constructed as an attack, and then transformed into an offence of damage. Taking the experience of the United States as an example, the national criminal legislator broadened the scope of predicate offences to include the production and trafficking of drugs. The indictment of the cleaning up of money from drug trafficking marked a significant change in the history of the repression of national money laundering: the drug market was, and still is, one of the major sectors in which criminal organisations operate and from which they derive large amounts of money. Moreover, the material object of the crime was engraved by the intervention of the Gava-Vassalli with the provision of inclusion, besides money, of the other utilities, too.

The changes made in 1990 somehow managed to alter the spirit of Italian discipline and gradually bring it closer to the American one. Widening the categories of predicate crimes, together with the inclusion of those phenomena linked to organised crime, indicated a renewed conception of the legal asset protected by the norm: patrimony, no longer seen in a static and individualistic perspective, but dynamic and collective. Economic interests, which were affected by the release of polluted revenues into the legal market, were also to be protected. The subsequent interventions were less than a year after the Gava-Vassalli and were determined by the conclusion of the Strasbourg Agreement, deposited by the Council of Europe on 8 November 1990. The convention, indicating more specifically the characteristics of the offence, prompted the Italian legislator to carry out further renewal of the case.

Worthy of note among the innovations introduced is that the necessary link to the closed category of predicate offences has been overthrown: following this modification, the laundered proceeds may derive from any non-culpable offence. In accordance with what has been observed at European level, the elimination of that exhaustive list allows the case to adapt to changes in the phenomenon of criminal organisation and the different facets that cleaning up dirty money can assume. Along this line, Law 186/2014 modified art. 648bis incriminating: «*anyone who, other than in cases of complicity in the crime, replaces or transfers money, goods or other benefits deriving from a non-*

culpable crime, or carries out other operations in relation to them, so as to hinder the identification of their criminal origin [42]». This same law has also introduced art. 648ter which incriminates anyone who, other than in cases of complicity in the crime and in the cases provided by art. 648 and art. 648 *bis* uses money, goods or other benefit deriving from a crime.

2.4. United States vs Campbell: how the American legislation acted in a money laundering case

This case has been chosen because it involves a crucial issue on the money laundering analysis: it underlines the problem of the *willful blindness* with reference to a non– financial intermediary.

In the summer of 1989, Ellen Campbell, a real estate agent, established a relationship with Mark Lawing, a drug trafficker, who intended to buy a property in Mooresville, the area where Mrs. Campbell operated. The period of visiting the houses offered for sale lasted approximately five weeks, during which time Mr. Lawing and Mrs. Campbell often met. Mr. Lawing sometimes showed up at the meetings driving a red Porsche, which he owned, and at other times in another gold Porsche, which belonged to a fellow drug dealer who accompanied him on his visits. The appointments to view the properties were always made during normal business hours. Mr. Lawing and Mrs. Campbell often had telephone conversations, during which Mr. Lawing, in order to justify the availability of his money, informed Mrs. Campbell that he owned a company, L & N Autocraft. In order to prove that he had the necessary liquidity to purchase a property, Mr. Lawing showed Mrs. Campbell a briefcase containing $20,000 in cash. As a result of these visits, Mr. Lawing's final choice fell on a house of $191,000 owned by Mr. and Mrs. Fortiers, the sale of which had been entrusted to another realtor, Ms. Sara Fox. Mrs. Campbell continued to assist Mr. Lawing in the negotiation: she transmitted the proposal to the other agent, Ms. Fox, who in turn interfaced with Mr. and Mrs. Fortiers. After an initial agreement in which the sale price was set at $182,500, Mr. Lawing, having failed to obtain a loan, convinced Mr. and Mrs. Fortiers (with the help of Mrs. Campbell who personally transmitted the purchase proposal) to lower the price to $122,500, with an additional percentage for the agent's commissions. Mr. Fortiers, Mr. Lawing, and the two agents Fox and Campbell, met in the Moorsville sales office, and Mr. Lawing paid the owners $60,000 in a cash advance and hundreds of dollars to the two agents. The money had been wrapped in small bundles and collected in a brown paper bag for shopping. For the facts described, Mrs. Campbell was convicted of money laundering in violation of sections §§1956(a)(1)(b) and 1957(a) of Title 18 U.S.C. and found guilty by the jury. Following the verdict, the District Court granted a motion to dismiss. The U.S. Government appealed.

[42] Cfr. DELL'OSSO, *Riciclaggio di proventi illeciti e sistema penale*, Torino, 2017.

In the United States vs. Campbell case, the most highlighted question of law relates to the subjective element of the money laundering action, in particular the need to prove the purpose of concealing the proceeds of the illegal activity. The District Court granted the motion for acquittal because, through the evidence produced in the trial, it was not possible to show that the defendant Campbell had acted in order to conceal the proceeds from the drugs. This statement is based on an interpretative assumption of the types of offence that do not deserve to be shared, and this is what determined opening of a subsequent judgment before the Court of Appeal, which overturned the verdict of first instance. Section 1956 (a)(1)(b)(i) merely requires the defendant to represent and be aware of these facts alone: that the funds involved in the economic transaction are the proceeds of an illegal activity and that the transaction was carried out in order to conceal the nature and origin of the proceeds. Therefore, in order to affirm constitution of an offence, it is not particularly relevant that the agent has, in turn, the purpose of concealing dirty money; instead, it is sufficient that he/she is aware that this purpose is inherent in the animus of the person who owns the proceeds. This occurs quite often in cases where the typical event is carried out by a person different from the subject who represents the source of the dirty money. In the case examined, the decisive aspect, which needed to be proven, was not Campbell's purpose, but rather her knowledge of Lawing's purpose. If it had been considered necessary for the defendant to have the same purpose, the accusation made against her would have been unfounded, since her only purpose was clearly to conclude the real estate deal in order to obtain her commission. This conclusion does not, however, solve all the problematic aspects that may occur. The difficulty arises when one is confronted, in court, with a rigorous evidentiary criterion, that of *beyond a reasonable doubt*, rooted not only in many European systems, but also in the United States.

The scope of the standard *beyond a reasonable doubt*, which is the main rule of criminal judicial epistemology, has always been the focus of attention of U.S. courts which, in spite of the permissive attitude adopted by the Supreme Court, tend in majority for its univocal and generalized application, with the consequent refusal of its declination with respect to the specificity of the actual case [43]. Here, the unequivocal meaning of the rule must lead to the exclusion of the possibility to demonstrate the negligence of the defendant. So, it would not be sufficient, to say that, according to the parameters of ordinary diligence, Campbell should have recognized the purpose that drove the drug-traffickers to determine purchase of the property. In this case, there was no evidence of Lawing's popularity as a drug dealer, especially in the area where Campbell worked as a real estate agent and lived. The city in which Lawing performed his operations, Kannapolis, is located fifteen shirts from Mooresville. However, many aspects, neglected by the Court of Appeal, deserve to be evaluated. First of all,

[43] MAY, *Some Rules of Evidence: Reasonable Doubt in Civil and Criminal Cases*, 1876, 642-656.

Lawing's lifestyle: the large amounts of cash and the way he kept it, the availability of luxury cars, the possibility of viewing real estate solutions during normal working hours, the Bank's refusal to grant a loan, the fraudulent transaction that marked the final conclusion of the deal.

In order to be convicted for money laundering under §1956 (a)(1)(b)(i), it is necessary to resort to the institution of "willful blindness [44]" the use of which has been widely used in the USA. This expression indicates an attitude of deliberate inability to carry out a reasonable investigation into an illegal context that is being accessed, despite the suspicion or awareness of the high probability of its existence [45]. According to that meaning, *willful blindness* should be significantly different from negligence which, on the other hand, should lead to the defendant's criminal liability being excluded. Indeed, the U.S. Supreme Court has on several occasions dwelt on the distinction between the psychological attitudes of *willful blindness*, the case of recklessness and that of negligence. The *voluntary blind man* is one who does everything possible to avoid confirming the existence of an offence and takes action to that end. It is easy to detect the affinity between this kind of animus and that which traditionally characterises knowledge. Recklessness concerns those who are aware of the mere risk of illegality; finally, negligence lies in the attitude of those who should have known of a certain risk, but do not know it [46]. In the case in question, from all the unequivocal evidence that has emerged, it can be considered that the defendant voluntarily and by deliberate choice, decided to remain *voluntarily blind* to the fact that Lawing was a drug dealer and that the purchase was intended, at least in part, to hide the proceeds of that illegal activity. Instead, with regard to the violation of §1957 (a), in this case too, the problematic question concerns knowledge of the illegality of the proceeds. There was no dispute that Campbell was involved in a monetary transaction worth more than $10,000. The considerations developed for the previous indictment are also repeated for the charge in question. In conclusion, the decision of the District Court granting the motion for acquittal is overturned by the Court of Appeal.

2.5. How Italy would have acted in the Campbell case in 1989

In order to underline the differences between the application of anti– money laundering laws in Italy with respect the United States, considering the crucial role of intermediaries, it could be interesting to analyse how Italy would have acted in the Campbell case. The United States vs Campbell case relates to events which happened in 1989. At that time, the issue of money laundering in the Italian

[44] Cfr. HUSAK-CALLENDER, *Willful Ignorance, Knoledge, and the "Equal Culpability" Thesis: A Study of the Deeper Significance of the Principle of Legality*, in *Wis. L. Rev.*, 1994.
[45] Cfr. NEMETH, *Criminal Law*, 2012.
[46] Supreme Court Decision (2011). Available on: *https://www.supremecourt.gov/opinions/10pdf/10-6.pdf.*

criminal system had not yet been subjected to the corrective measures inaugurated by Law n. 55/1990 and by the European Directives. The version of the law in force at that time, under the title "Replacement of money or valuables from aggravated robbery, aggravated extortion and kidnapping for the purpose of extortion", established the penalty for anyone who, other than in cases of complicity in crime, had committed facts or acts aimed at laundering money or goods from the crimes of aggravated robbery, aggravated extortion or kidnapping, for the purpose of extortion with other money or other goods in order to obtain for themselves or others a profit, or to help the perpetrators of the above-mentioned crimes to secure the profit of the crime. The limited nature of the catalogue of money laundering offences refers only to articles 628, 629 and 630 of the Penal Code. According to those laws, it would have led to the existence of the offence of money laundering being excluded, if the case in object had taken place within the Italian jurisdiction. For the Italian legislation, how could Mrs. Campbell have answered for money laundering, considering that she had not committed the conduct incriminated by the art. 648-bis It clearly emerges how the United States system, grasping in advance the teleological aspect of the phenomenon and evaluating the existing link between money laundering and drug trafficking activities, has succeeded in offering a model of inspiration for other penal systems. Ellen Campbell's conduct would not, however, have gone unpunished. In fact, since its promulgation, the Rocco Code has punished the crime of receiving stolen goods. According to art. 648, this crime occurs when, in order to procure a profit for himself or others, anyone buys, receives or conceals money or things from any crime in which he has not participated, or in any case meddles in having them bought, received or concealed. The purpose of the rule is to prevent people other than those who have committed crimes from making a profit from them. According to this rule, Campbell, undoubtedly moved by the aim of making a profit (and therefore with the subjective animus of the specific intent, corresponding to the one required by art. 648) put in place the conduct of receiving the money (the commission resulting from conclusion of the deal between the drug trafficker Lawing and the spouses Fortiers and the tips paid by the former). She also interfered in the deal concluded with Mr. and Mrs. Fortiers, and contributed to its success. So, as happened during the US trial, the problem could be posed regarding proof of Mrs. Campbell's knowledge of the criminal origin of the money used to buy the property. With regard to this issue, the national case-law has clarified that the existence of *dolus eventualis* is sufficient to support the receipt of stolen goods [47]. It requires an attitude which, while not reaching a level of certainty in relation to awareness of the criminal provenance, is on a higher level than the mere suspicion [48]. According to what was recently stated by the United Sections of the Supreme Court of Cassation (and, since it is an expression of the Court's

[47] CANESTRARI, *Dolo eventuale e colpa cosciente*, Milano, 1999.
[48] Cfr. GIOVAGNOLI, *Manuale di diritto penale Parte speciale*, 2019.

function, extendable also to the facts which took place before the ruling) «*a factual situation of unequivocal meaning is necessary, which imposes on the agent a conscious choice between acting, accepting the possibility of committing an offence, and not acting therefore, recalling a criterion elaborated in doctrine to describe possible malice, it can reasonably be concluded that this is recognisable with regard to the offence when the agent, representing the possibility of the criminal origin of the thing, would not have acted otherwise even if he had the certainty of such origin*» [49]. The relationship between willful blindness and *dolus eventualis* does not seem to be fully coincident. In the Italian penal system, the subjective element of willful intent must always have a volitional component, so that willful blindness would seem to be more correctly reconnectable to the category of conscious guilt [50]. The evidence produced in the United States vs. Campbell case should, therefore, collide with the difficulties that the category of *dolus eventualis* raises and with the evidentiary rule of "beyond reasonable doubt", which operates quite rigorously in the Italian criminal trial and does not accept temperaments. So, *dolus eventualis* requires that the criminal origin of the goods or money should not be mere suspicion, nor the object of mere presumption, but should be inferred from careful analysis of the evidence, which must be unambiguous. A conviction could be reached only if the judge considered that the criminal origin of the money had been foreseen by the person acting as agent, in this particular case Mrs. Campbell, but this had not led her to desist from her criminal intent.

2.6. How Italy would act in the Campbell case today

If the object of money laundering is represented by the proceeds of drug-trafficking activities, then the positive assumption required by art. 648-bis. If the United States vs. Campbell case had occurred today and if it had fallen under the Italian jurisdiction, the money laundering case would have had to be assessed from the point of view of typical conduct and, once again, the existence of the required psychological attitude. Prior to any other aspect, it is necessary to clarify how this case is punishable by the institution referred to in Art. 110 of the Italian Criminal Code. The conduct of money laundering may consist alternatively in the substitution of money, goods or other utilities with other goods, money or other utilities; the transfer of the proceeds of crime; and, finally, the performance of other operations carried out in such a way as to hinder identification of the criminal origin of the money, goods or other utilities.

According to established case-law and the prevailing doctrine, suitability to obstruct identification of the criminal origin must be used not only with regard to *other operations*, but also with regard to the

[49] Cass., Sez. Un., November 26th 2009, No. 12433. Available on: *dejure.it*.
[50] Cfr. PISANI, *L'elemento psicologico del crimine internazionale nella parte generale dello Statuto della Corte penale internazionale*, in *Riv. it. dir. e proc. pen.*, 2011, 1387.

action of substitution and transfer. In the case in question, the laundering mechanism chosen was that of replacing dirty money with the property purchased by Mr. and Mrs. Fortiers, an operation to be considered without doubt suitable for hindering identification of the money's criminal origin. This conduct was not carried out directly by Mrs. Campbell, but by the drug trafficker Lawing himself. The latter, however, could not be held liable for money laundering, since art. 648-bis establishes as a negative assumption that he had not carried out or taken part in the predicate offence (the so-called *self-laundering benefit*).

The perpetrator of the predicate offence, in the Italian penal system, could at most re-exploit the recently introduced case of self-laundering ex art. 648-ter. However, it should be considered that this has a more circumscribed scope than the offence in question. It should, in fact, be excluded that today the clause of re-serving *outside the cases of conspiracy* has assumed a mere function of sorting the facts of self-laundering towards art. 648 *ter*[51]. Self-laundering, which presupposes that the perpetrator of laundering and the predicate offence are the same person, is punishable only when the conduct of employment, replacement, (or) transfer of the illegal income is linked to economic, financial, entrepreneurial and speculative activities. Cases in which money, goods and other utilities are intended for mere personal use and enjoyment are excluded from the area of criminal law. However, without wishing to spread the word further about the position of the drug trafficker, there is no doubt that Mrs. Campbell made an etiologically significant contribution to perfecting the substitution of money. In order for the deal to go through and collect the commission, she put the first person in contact with the agent who was in charge of selling the house he had chosen, and ended up assisting him until the deal was concluded: it was Mrs. Campbell herself who forwarded the proposal to the other agent. Even if Lawing's conduct were to fall within the area of self-laundering benefit, this would not exclude Mrs. Campbell's liability as a competitor in laundering under article 648 *bis*, punishable *ex officio* with imprisonment from 4 to 12 years and a fine from €5,000 to €25,000.

As far as the subjective element is concerned, all the considerations made in the previous paragraph regarding the different type of handling of stolen goods, limited to the profile of knowledge of the criminal origin of Lawing's money, must be considered reproducible here. As a *quid pluris* with regard to the case of receiving stolen goods, the subjective element should also cover the suitability of the consignment in hindering identification of the origin of the goods. The relationship between receipt of stolen goods and money laundering should be considered resolved by considering article 648 *bis*, a special rule with regard to the case of receipt of stolen goods (Cass., Sez II, 18 December

[51] DELL'OSSO, *Riciclaggio di proventi illeciti e sistema penale*.

2015, n. 1924; Cass., Sez. II, 21 April 2016, no. 18695). However, it must be considered that there is a different course of action, which would mean that Mrs. Campbell would not be charged with money laundering. In the face of an intermediation conduct, the fact of receiving stolen goods has been considered configurable if the intermediary merely puts the buyer and the seller in contact; conversely, the most serious crime of money laundering would occur when the material transfer of the property from the seller and the buyer constitutes conduct that places the intermediary among those who act to hinder the possibility of identification of the property itself (Cass., Sez. II, 16 April 2010, n. 18607). Following this approach, and not resorting in this case to a double passage of money, first in the hands of Mrs. Campbell and then in those of the Fortiers, even in the present day, if the case had been examined by the Italian jurisdiction, it could have been resolved with a less serious conviction for receiving stolen goods, instead of that of money laundering.

Conclusions

With reference to the analysis carried out on the case US vs Campbell, it would appear that, under US Law, the sections devoted to money laundering hypotheses are still better suited to the repression of this worrying phenomenon. It cannot be said, however, that Italian law leaves room for impunity. The opening up of the closed catalogue of crimes presupposed to any non-culpable crime, and the recent indictment of the crime of self-laundering are indicative of a constant effort by the legislator to make the instruments of law enforcement increasingly effective and complete. It seems that some aspects still deserve to be refined, first of all the evidentiary difficulties that intensify even more when they are confronted with a system, such as the Italian one, aimed at achieving procedural certainty and which does not tolerate spaces for flexibility. A body of legislation has been derived from the balance between such opposing interests which, notwithstanding some weak points, fully succeeds in achieving the objective of combating illicit wealth, making Italy fully involved in the integrated and global fight against the phenomenon of organised crime.

According to the issues raised by this analysis, it could be said that the basic aim of anti-money laundering laws in the two areas considered is very similar, but there are important differences. Even though these Entities have very different legal systems, the mandate of governments and authorities focuses on international guidelines and has experimented more than one line of action.

Both the regimes have erected as pillar the obligation for financial and non-financial operators to report suspicious transactions and to strictly investigate on the identifications of customers. Anyway, a question arises: Is it the increase of punishment, adopted by both the regimes, or punishment in general the most effective way to incentivise these categories to remain in the legal market?

According to the economic literature and particularly the study conducted by E. Takáts [52] for the International Monetary Fund (IMF), it is possible to provide how should be also dangerous an excess of reports guided by fear of reprisals. Through the so– called *Crying Wolf Theory* this economist has provided that as in the famous storytelling, if someone scream «Alarm!» too much times, also superficially and without having a verified reason, when the danger is true, nobody believes him more. The model elaborated by Takáts has the objective of demonstrating how, in the fight against money laundering, with reference to the reports of suspicious transactions, the quality of these reports is more relevant than the total amount of them. Along this line, according to the FATF and the international FIUs, too, the real control on transactions should already be initiated by the entities indicated by the law.

However, it is interesting to underline another prospective, that comes from Dalla Pellegrina and Masciandaro [53] (2009) who define the scheme of this reporting regime as a game with three group of players: criminals, intermediaries and the Authority whose role is, on the one hand, to assess the efforts of intermediaries, but, at the same time, to compensate and to face the difficulty to of detecting money laundering operations. In this way, like also explained by Gara and Pauselli (2015): «*banks may end up under-reporting useful STRs (and not only over-reporting them, as predicted by Takàts) since they put too little effort in identifying money laundering or money launderers are too sophisticated to detect. At the same time, though, the supervisor, with its insider knowledge, mitigates the asymmetric information distortions typically arising within the traditional principal-agent framework* [54]». Indeed, Governments and Authorities have to face the difficulties of identifying this type of crime because with the globalisation process and the "Techno-Era", money laundering has become more sophisticated [55]. Following this reasoning, the centrality of the FIUs (the Authority considered in the scheme) generates a different equilibrium by inducing a higher quality of effort made by intermediaries, related to low levels of fines. According to the idea for which a high level of fines could not be the only solution, Castaldo and Naddeo (2010) [56], starting from the axiom of individual rationality, explain how one will be more inclined to choose the lawful conduct instead of the unlawful conduct if the former is more useful to him. Therefore, the obligation of participation to

[52] Cfr. TAKÀTS, *A Theory of "Crying Wolf"– The Economics of Money Laundering Enforcement, Journal of Law, Economics, and Organization*, 2011, 32-78.
[53] Cfr. DALLA PELLEGRINA-MASCIANDARO, *Organized crime, suspicious transaction reporting and anti-money laundering regulation*, in *Regional Studies*, 2020.
[54] GARA-PAUSELLI, *Looking at 'Crying wolf' from a different perspective: An attempt at detecting banks under– and over-reporting suspicious transactions*, in *Quaderni dell'antiriciclaggio-Analisi e Studi*, 2015, 6.
[55] Cfr. STAROLA, *Il riciclaggio nel D.Lgs. 231/2007.*
[56] Cfr. CASTALDO-NADDEO, *Prevenzione del riciclaggio ed economic approach: verso una politica criminale integrata?*, in *Il Denaro Sporco-Prevenzione e repressione nella lotta al riciclaggio*, Padova, 2010, 59 ss.

the legality, in order to be maintained over time, needs to be assessed not only the sanctioning aspect, but also that linked to any incentives prepared for the commitment of the individual intermediary.

Moreover, another crucial issue is linked to the importance of information, in terms of knowledge and training that should be ensured to all the subjects involved in these obligations. In order to do that, the anti-money laundering regulation shall provide clear and specific patterns of conduct and analysis.

In conclusion, policies should invest resources also to ensure clear instruments for the effectiveness of the results and also think to other form of incentives to promote the legality.

Starting from the fact that money laundering has become a very articulated crime, the system that has to contrast it should also be sophisticated and conscientious. In the last ten years, both in the US and in Europe, anti-corruption laws have made much progress [57], so next step, should be improve the standard of clearness of the schemes and promote the efforts of intermediaries and business activities.

[57] Cfr. UIF (Unità di Informazione Finanziaria della Banca d'Italia, Financial Intelligence Unit), *Annual Report.*

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CHAPTER 3. Money laundering, Food activities and Mafia: evidences from the Italian provinces

3.1. Introduction

Money laundering is one of the most complex crimes affecting the global economic system. Such a complexity is relevant to understanding the characteristics of this criminal phenomenon: money laundering activities lead to other offences involving many different sectors. The International Monetary Fund (IMF) estimated that the amount of the global money laundering flows represents between 2 and 5 percent of global GDP ($1.6 to $4 trillion per year)[58] in 2018.

The economics literature describes money laundering as a process that develops in three different stages (Starola, 2011): 1) placement - the introduction of illegal proceeds into the financial system through deposits, wire transfers, or other means; 2) layering - in which criminals move such funds around the world to separate them from their illegal source and 3) integration - when these funds re-enter the legal economic system through investments in real estate, luxury assets or other businesses. Following these steps and according to (Masciandaro, 1993), we can define this crime through two key characteristics: illegality and concealment. Illegality refers to the fact that money laundering entails the use of illegal proceeds and concealment is linked to the operation of hiding the original source of that amount. To these goals, the organised crime uses many different activities, to elude investigations and control by the police.

The aim of this paper is to investigate the link between money laundering and the food and beverage activities. This link clearly emerges from some recent police operations. For example, the investigation called Babylonia involved the provinces of Rome, Naples, Milan and Pescara and led to the arrest of 23 people who were laundering money from usury and extortion to buy restaurants and pizza places. Moreover, this work intends to verify the role of mafia-type association in the development of money laundering. The analysis considers the Italian provinces over the period 2010–2018, following both the economic literature and using the econometric approach.

Given its high heterogeneity in terms of economic, social and institutional characteristics[59], Italy is a

[58] IMF (2018) Anti Money Laundering and Economic Stability, IMF Finance & Development Magazine. Available on: https://www.imf.org/external/pubs/ft/fandd/2018/12/imf-anti-money-laundering-and-economic-stability-straight.htm;

[59] See A tale of two economies, The Economist. The English journal points out that many of the problems of Italy depend on the differences between North and South, which in fact constitute "two economies" in one Country. Between 2007 and 2014, the 70% of the 943,000 unemployed was in the southern regions and the level of employment in southern regions was the lowest with respect to any other EU country. Even between

compelling case study. In this context, we attempt to answer the following research questions: a) How do food activities and the presence of mafia-type associations affect this kind of offence? b) Are the current policies to contrast money laundering effective? With this aim, the intention is to give a new contribution to the economic literature on money laundering, which is principally focused on theoretical studies and the main financial effects of this crime.

3.2. Money laundering: contributions from the economic literature

According to Masciandaro (2007) that takes up Becker's (1968) approach on crime, one can choose various strategies to launder dirty money. Criminal groups can decide to invest it in the legal or the illegal market, but they can also save or consume the cash proceeds. On this basis, the core of this choice is the evaluation between costs and benefits. For example, each criminal could be influenced by the probability of being incriminated and suffering the punishment established by the law. This approach focuses on the degree of utility that is tied to "the possibility of increasing the rate of penetration into legal sectors of the economy, through the moment following investment (pollution) and the possibility of increasing the rate of mimicry of the subjects and the criminal organisations in his/her complex mimicry"[60] (Masciandaro, 2007).

Indeed, the function of money laundering is to conceal the link to illegal proceeds. However, in order to decrease the odds of getting caught, that income has to be cleaned up. The benefits are the effects related to the use of these proceeds, whereas the cost refers to being discovered. Following the analysis of Masciandaro (2007), we can identify the microeconomic causes of money laundering. The aim is to transform a potential purchasing power into an effective purchasing power. The scope of launderers is to cleanse the money raised from an illegal activity by reusing and investing it in a legal market or another crime. The subjects of this kind of operations are usually part of a criminal organisation that resembles a real business, whose corporate structure acts follow rational behaviours with the intention of obtaining maximum profit. Masciandaro (2007) explained that the first phase of money laundering consists in the accumulation of basic resources through a certain crime. At this point, criminals must decide whether to use the obtained income for consumption; to invest it legally; to save it or to put it back into the illegal circuit by re-proposing the same model. The study notes that what attracts people inclined to commit money laundering offences, even in comparison with

2001 and 2013, the North's economy grew by 2%; but meanwhile, the South's economy contracted by 7% and in the last years the situation has not changed a lot.

[60] Translation from: Masciandaro, D. (2007) Il riciclaggio dei capitali illeciti: profili di analisi economica- Il riciclaggio: profili microeconomici in Le Conferenze della Scuola di Addestramento del SISDe, GNOSIS Vol.3. p.2.

other types of crime, is the degree of utility that they find in transforming money that has been obtained through various offences and which gives three main levels of utility. Firstly, the opportunity for money launderers to transform the illegal proceeds into purchasing power (transformation). Then, the possibility to invest these proceeds in the legal market (pollution) and the chance for criminals of being camouflaged in society (camouflaging). In addition, according to the basic philosophy of Gary Becker (1968) with regard to the costs and benefits of crime, Masciandaro (2007) shows that the choice made by criminals, depends on the amount of money raised during the accumulation phase (positive relation); the probability of getting caught (negative relation); the relevance of the sanction (negative relation); the profitability of the dirty money (positive relation); the cost of the criminal action (negative relation). Following these evidences, it emerges that the role of enforcement in this challenge against money laundering is fundamental. Indeed, the empirical literature (Cohen 2005) has also verified that deterrence variables are important determinants of crime: a higher probability of conviction or the severity of punishment can involve a reduction in the expected utility from illegality.

The amount which is channelled to a new criminal activity generates a second amount of dirty proceeds that will give birth to a second money laundering process. If this operation is repeated, the launderers gain a significant portion of economic power. Indeed, there will be strong pollution effects in this new scenario: "the lower is the opportunity cost; the bigger is the share of reinvestment in illegal activities, as well as the necessity of financing this reinvestment with clean liquidity; the bigger is the differential of the expected real return of the illegal activities; the lower is the expected riskiness of the illegal activities; the bigger is the initial volume of the revenues of the criminal sector"[61]. By observing this evidence, one of the scopes of this paper is to investigate empirically which are the main legal sectors chosen by criminals to launder dirty money. In this regard, the food and beverage sector uses cash and irregular labour quite intensively and it is particularly marked by business opacity and organized crime infiltration (Transcrime, 2017). Moreover, some investigations (Anderson, 1979 and Transcrime, 2017) have found that many restaurants in the North of Italy are becoming an important circuit for laundering cash, which is why this study investigates whether this circuit could be one of the possible determinants of money laundering.

In this regard, there are not many empirical analyses that have investigated other possible channels in which this crime operates. Nonetheless, one of the theoretical contributions refers to the link between money laundering and other offences, and particularly to mafia crime. Several studies and police investigations have documented (Scaglione, 2016; Europol, 2013) that mafia clans in Italy

[61] Translation from: Masciandaro, D. (2007), ibidem, p.3.

have been massively involved in money laundering, entering markets such as public/private construction, waste disposal, leisure industries, the renewable energy sector and many other kinds of businesses. Moreover, according to Barone (2004), money laundering is closely linked to usury. In his study, usury represents an easy way of laundering dirty money. The process can appear controversial because the main hypothesis is that usurers fix an interest rate equal to or lower than that of legal intermediaries, the reason being that their main objective might not be to make a huge gain but just to launder dirty money. So, people are incentivised to get a loan easily from a subject who does not follow normative and legal obligations.

Starting from these assumptions, to encourage people to remain in the legal circuit, Castaldo and Naddeo (2010) propose another approach in which the main action is to incentivise the "sane" part of society to remain within a legal prospective, through collaboration between all the subjects and Authorities that might be involved in the money laundering trap. Following the approach of game theory[62], the objective is to create a sort of sane network in order to understand the main actions of criminals, in this way eroding the information gap between legal and illegal actors. In this study, the role of intermediaries and that of other circuits defined as being at higher money laundering risk, hence more in touch with potential money launderers, could be decisive. In fact, the last five European anti-money laundering Directives have shown a great deal of involvement by the aforementioned subjects in the fight against money laundering. The most striking example is the obligation of these actors to report suspicious transactions. After these assertions, it is not difficult to understand the aims of the last legislation on money laundering. In Italy, this crime has been defined by European law. Since 1991, the EU has approved five Directives (I Directive- 91/308/EEC, II Directive- 2001/97/EC, III Directive- 2005/ 60/ EC, IV Directive - 2015/849/EC, V Directive- 2018/843). The fourth one was implemented by the Italian Parliament with the D.lgs 90/2017 introducing many structural novelties (that also built up the basis for the V Directive). In this direction, the IV and the V Directives have extended the list of those required to comply with anti-money laundering obligations including the exchange of virtual currencies - that will be counted in a special section of the register of changers– as well as effective limits to the use of cash. These laws also have a more rigid sanctioning scheme with regard to both criminal and administrative irregularities and oblige the owners of business activities to be registered in a special register managed by the OAM (Organism of Agents and Mediators).

[62] Money laundering has been considered a game that is both dynamic (criminals can operate more and more times) and non-cooperative (there is no cooperation between criminals and anti-money laundering Authorities), characterised by incomplete information (the enforcement Authorities do not know the criminals' strategy beforehand). In this sense, the intent is to capture preventively the decisions of the criminals using the approach of the Nash equilibrium, following dominant mixed strategies.

Nevertheless, money laundering is a crime that affects not only the micro scenario, and this is one of the reasons why the economic literature has shown that this phenomenon has become very complex. Quirk (1996) focuses on some "parallel scenarios" used by launderers, which extend densely on a global scale involving the system of intermediaries, through a large number of illegal transactions. Before going into details of the effects outlined by Quirk, it might be interesting to see some of the techniques used by criminals to launder money, making it converge from one country to another by circumventing the regulation. This is the case of using so-called "parallel banking systems". These are circuits specifically developed by criminal organizations in order to circumvent financial laws. Among the best known, Quirk (1996) shows a Chinese method, known under the name of *fei chien* (flying money), which has been operating for years by camouflaging imports and exports of illicit money. Another method that is rather well known to money launderers is "smurfing", which consists of making a multitude of deposits, over different periods of time and through different banking institutions, with the aim of not reaching the threshold of the minimum reporting requirement. Finally, the "barter" (Quirk, 1996), an international barter of stolen property often belonging to the luxury market. Along this line, money laundering begins an offence made by "white collar[63]"; an illegal process linked to people who are perfectly integrated in the business circuit, leading to the suggestion that this crime is guided by a high level of education because of the specificity and complexity of the methodology involved.

According to the aforementioned literature, money laundering is a crime that involves various circuits and could be analysed from both a micro and macro prospective. In the next paragraph, this paper will focus on the effects that this crime has in Italy, a country considered to be at high money laundering risk due to the significant presence of corruption, mafia and other connected crimes.

3. 3. Money laundering in Italy

Taking into account the financial data analysis conducted by the Italian Financial Intelligence Unit (UIF), Table 3.1 shows the number of suspicious transactions at the end of the first semester of 2019, by considering the reporting groups at higher risk of money laundering. Banks and Post offices appear to be the circuits that have reported the highest number of suspicious transactions (32,277), but professionals[64] have also given a significant contribution in this sense (2,549). Indeed, this sector

[63] See: Nagel, P.; Weiman, C. (2015) Money laundering (Thirtieth Annual Survey of White Collar Crime), American Criminal Law Review, Vol. 52; Ngai, G. (2012) Money laundering. (Twenty-Seventh Annual Survey of White Collar Crime), American Criminal Law Review Vol. 49.

[64] Following the IV European Directive, "Notaries and other independent legal professionals, where they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by

was included in the list of subjects with the obligation to report this kind of operation (III, IV and V anti-money laundering European Directives).

TABLE 3.1- SUSPICIOUS TRANSACTION REPORTS- I SEM. 2019

Reporting group	Money laundering
Banks and Post offices	32.277
Other financial operators	12.285
Professionals	2549
Other non- financial entities	3.636
Total	50.747

SOURCE: UIF (2019)

The anti-money laundering authorities focused on the reporting of suspicious transactions. However, there could be a weak point in this choice. In fact, according to the economic literature, and particularly to the analysis made by E. Takáts (2011) for the International Monetary Fund (IMF), an excess of reports could even be dangerous for the financial system. However, the aim of following the money has revealed some other particular sectors that are defined as being at a high level of risk. The IARM project (Transcrime, Cattolica University, 2017) defines the analysis of money laundering risks using three factors: threats, vulnerabilities, consequences. The first dimension refers to the category of subjects who accumulate money stemming from other illicit business to continue their criminal activity.

In the case of Italy, the IARM has formulated a list of sectors that have the highest risk of money laundering. Table 3.2 shows that the most exposed circuit is that of food and beverage services with a risk indicator measured by considering: "Organised crime infiltration, illicit markets, tax evasion & underground economy, cash-intensiveness, opacity of business ownership, money transfers"[65]. Restaurants are a classic way to move and clean money. For example, with reference to Anderson (1979), in the city of New York since the '50s, the Mafia has controlled a conspicuous volume of legal market managing particularly food and beverage activities. According to a recent report by Eurispes (2017), in Italy there are at least 5,000 restaurants in the hands of organised crime. With a turnover

assisting in the planning or carrying out of transactions for their client concerning the: (i) buying and selling of real property or business entities;
(ii) managing of client money, securities or other assets; (iii) opening or management of bank, savings or securities accounts" are included.

[65] Transcrime, Cattolica del Sacro Cuore University. (2017) Assessing the risk of money laundering in Europe. Final Report of project IARM, p. 44.

of more than 21.8 billion Euro, the food service sector has a central role in the process of money laundering.

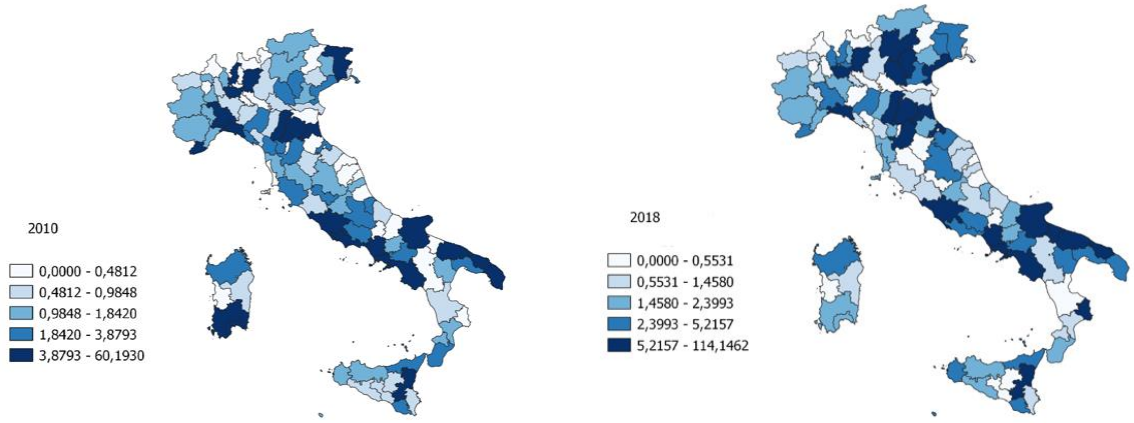
TABLE 3.2 - ML RISK COMPOSITE INDICATOR- Italian business activities

Business sector (NACE division)	**ML risk composite indicator score**
I 56. Food and beverage service activities	100.0
S 95. Repair of computers and personal and household goods	80.4
S 96. Other personal service activities	67.3
N 79. Travel agency tour operator reservation service and related activities	64.4
R 92. Gambling and betting activities	63.5
R 90. Creative arts and entertainment activities	62.1
P 85. Education	61.6
A 03. Fishing and aquaculture	61.0
M 74. Other professional scientific and technical activities	60.4
C 19. Manufacture of coke and refined petroleum products	59.1

SOURCE: TRANSCRIME - UCSC ELABORATION (2017)

Starting from such specific estimates, the incidence and evolution of money laundering in Italy can also be shown by considering the number of money laundering crimes reported to the judicial authorities (ISTAT, 2019). Looking at the legends, it is possible to see that the extremes of the size classes move upwards, indicating an increase of the phenomenon. Indeed, also considering the absolute values, this measure has in general increased at the national level from 1,314 (2010) to 1,834 (2018). In order to understand the heterogeneity of this value in Italian provinces, we can look at the number of money laundering crimes reported to the judicial authorities per 100,000 resident population (Figure 1).

FIGURE 1. NUMBER OF MONEY LAUNDERING CRIMES REPORTED TO THE JUDICIAL AUTHORITIES PER 100,000 RESIDENT POPULATION



DATA SOURCE: ISTAT (2019)

Figure 1 shows that, from 2010 to 2018, the most affected Italian provinces were located in Apulia, Campania, Lazio, Emilia Romagna, Liguria and Veneto.

However, Milan (Lombardy), Trento (Trentino Alto Adige) and Catania (Sicily) also register a high crime level. This evidence shows that money laundering is concentrated not only in areas that are commonly associated with a high level of crime and shadow economy, as in the South, but also some large provinces in the North. There, the tertiary sector is more developed, the level of employment is higher and there are therefore many opportunities for criminals to use different and sophisticated methods to launder money.

Following these evidences, the paper develops some testable hypotheses that guide the empirical analysis. In particular, the study considers the following potential determinants of money laundering:

Hypothesis 1: A larger size of the food and beverage services sector leads, ceteris paribus, to a higher rate of money laundering.

Hypothesis 2: A greater presence of mafia-type associations leads, ceteris paribus, to a higher rate of money laundering.

A common belief is that the term ‘money laundering’ originated because Italian members of the mafia in the U.S. purchased cash-only laundromats and used them as a front in order to hide the

insane amount of money they were getting from prostitution, bootlegged liquor sales and other criminal activities. Several studies and police investigations (Scaglione, 2016; Europol, 2013) have documented that mafia clans in Italy have been massively involved in money laundering, entering markets such as public and private construction, waste disposal, leisure industries, the renewable energy sector and many other businesses.

3.4. Data and methodology

The previous hypotheses will be tested by taking into consideration the 107 Italian provinces, from 2010 to 2018 using data from the National Institute of Statistics (ISTAT), Movimprese and the Italian Ministry of the Education. The dependent variable (Table 4.1 in Appendix A3..) is the money laundering rate (*MLD,* which is the number of money laundering crimes reported to the judicial authorities per 100,000 residents). The main variable of interest for the analysis is the presence of activities related to catering services. In order to account for some specific characteristics of money laundering, the paper chooses the following variables: i) the number of activities related to the food services sector-ATECO 56- per 100,000 resident population *(Food1);* ii) the incidence of mafia-type crimes *(Mafia)*. Furthermore, the study also considers the control variable *Education* represented by the share of provincial population graduates. To address the deterrent effect on criminal behaviour, the regressions include *Clearance* that is the ratio of crimes committed by persons known over the total of money laundering crimes. This variable is used to capture the efficiency of the Italian police. In order to solve the potential problems of endogeneity linked to the *Food1* (reverse causality), the study uses the share of hotel school as an instrumental variable *(Hotel School)*. Following the economic literature (Ping Yu 2015), one of the most used methods to solve endogeneity problems is that of instrumental variables.

This approach is also commonly used in the circuit of crime analysis where a frequent question is whether putting criminals in jail leads to a reduction of the number of offences (Ping Yu 2015). In the analysis presented here, *Food*, is instrumented by *Hotel School*, the share of Hotel School in each province-year, which is closely correlated to the potential endogenous variable and uncorrelated to our dependent variable *MLD*. Moreover, Table 4.1 also includes another variable, *Food2* used for some robustness checks made by starting from a second empirical analysis. In this case, the model changes the specification of the variable *Food1* considering the share of enterprises registered to the food services sector in each province-year (ISTAT).

Table 4.2 summarises some basic descriptive statistics of the variables used in the first estimation, while Table 4.3 shows the correlation matrix. Finally, Tables 4.4 and 4.5 represent the basic

descriptive statistics and the correlation matrix referred to the second empirical analysis.

TABLE 4.2 DESCRIPTIVE STATISTICS (1)

Variable	*Obs*	*Mean*	*Std. Dev.*	*Min*	*Max*
MLD	954	4.754631	11.25347	0	122.8248
Clearance	954	.5976775	.736192	0	14
Mafia	954	.2251418	1.090522	0	12.35269
Education	954	1225.933	1869.079	0	16640.5
Food1	848	832.5437	1111.158	0	12078.57

TABLE 4.3 CORRELATION MATRIX (1)

	MLD	*Clearance*	*Mafia*	*Education*	*Food1*
MLD	1.0000				
Clearance	-0.0410	1.0000			
Mafia	0.4745	0.1067	1.0000		
Education	0.4946	0.1076	0.4843	1.0000	
Food1	0.1323	0.0488	0.0612	0.1785	1.0000

TABLE 4.4. DESCRIPTIVE STATISTICS (2)

Variable	*Obs*	*Mean*	*Std. Dev.*	*Min*	*Max*
MLD	954	4.754631	11.25347	0	122.8248
Clearance	954	.5976775	.736192	0	14
Mafia	954	.2251418	1.090522	0	12.35269
Education	954	1225.933	1869.079	0	16640.5
Food2	848	237.9446	559.024	1.282022	5647.597

TABLE 4.5. CORRELATION MATRIX (2)

	MLD	***Clearance***	***Mafia***	***Education***	***Food2***
MLD	1.0000				
Clearance	-0.0410	1.0000			
Mafia	0.4745	0.1067	1.0000		
Education	0.4946	0.1076	0.4843	1.0000	
Food2	0.0673	0.0199	0.0370	0.1537	1.0000

Based on the extant literature, in this section the study implements a model that posits a relationship between the annual reported crime in each province and a set of explanatory variables that derive from socioeconomic, deterrence and crime-related factors. The basic econometric specification is given by the following equation:

$$MLD_{it} = \beta_0 + \beta_1 AV_{it} + \beta_2 MAFIA_{it} + \beta_3 FOOD1_{it} + \beta_4 CLEARANCE_{it} + \\ + \beta_5 EDUCATION_{it} + Year_t + \varepsilon_i \quad (1)$$

where the subscripts i and t represent province and year, respectively. $Prov_i$ represents individual effects to control for unobserved time-invariant heterogeneity factors that could affect provinces while $Year_t$ denotes a set of $(t - 1)$ year dummies included to capture possible shocks which may influence all provinces in a given year.

Moreover, considering a model that uses the approach of the instrumental variable linked to the food and beverage activities *(Food1)*, instrumented by the number of hotel school *(Hotel School)* per 100,000 resident population, we can rewrite the equation in the following way:

$$FOOD1_{it} = \theta_0 + \theta_1 HOTELSCHOOL_{it} + \theta_2 MAFIA_{it} + \theta_3 CLEARANCE_{it} + \\ + \theta_4 EDUCATION_{it} + Year_t + \upsilon_i \quad (2)$$

The hypotheses are tested through the IV (Instrumental variable) approach, using a fixed effects model and a random effects model, considering robust standard errors in both cases and obtaining results that are quite similar. In this case, looking at the result of the Sargan test, rejecting the null

hypothesis, the option chosen is that of the fixed effects model.

3.5. Results

Table 5.1 shows the results of the model (coefficients and robust standard errors) applied to the 107 Italian provinces during the period from 2010 to 2018. The model also uses the instrumental variable *Hotel School* in order to solve the previously explained potential problems of endogeneity linked to *Food1*.

The analysis shows that the presence of business activities related to food and beverage services are positively and statistically significantly correlated with the prevalence of money laundering. This provides support to the initial hypotheses. According to Transcrime (2017), in Italy, coffee bars and restaurants are the activities where it is much easier to launder organized crime's dirty money. The last hypothesis refers to the *Mafia* variable. It is highly significant and the coefficient has a positive sign, a result that confirms the linked hypothesis: mafia crimes follow the same money laundering trend. With reference to the control variables, the coefficient of *Clearance* always has the expected negative sign and the variable is highly significant. *Education*, it is highly significant. Moreover, the coefficient of this variable is positive and this result is consistent with the first part of this study, which underlined that this crime has become increasingly complex and sophisticated with globalisation.

Table 5.1 presents some robustness checks. The work firstly uses the variable *Food1* and those related to enforcement (*Clearance*) as a baseline. The results confirm that *Food1* and *Clearance* are both highly significant, the first coefficient has a positive sign while the second stays negative. The sign and the significance of these results do not change when adding one by one the other variables, *Mafia*, significant with a positive coefficient and *Education*, highly significant with a positive coefficient. Moreover, with reference to the postestimation analyses, the instrument passes the standard test of weak identification. Indeed, the Kleibergen-Paap rk Wald F statistic is high (241.868) and it is above the critical values listed in the table of Stock and Yogo (2005) in all the specifications.

TABLE 5.1 RESULTS AND ROBUSTNESS CHECKS [66]

MLD	***FIXED EFFECTS***			***RANDOM EFFECTS***		
Food1 (enterprises active)	0.001*** (0.000)	0.001*** (0.000)	**0.001*** (0.000)**	0.001*** (0.000)	0.001** (0.000)	**0.001*** (0.000)**
Clearance	-0.785*** (-0.194)	-0.882*** (-0.215)	**-0.773*** (-0.185)**	-0.775*** (-0.192)	-0.962*** (0.234)	**-0.867*** (0.205)**
Mafia		1.878* (1.108)	**0.784*** (0.306)**		2.312** (1.494)	**0.869* (0.499)**
Education			**0.004*** (0.001)**			**0.003*** (0.000)**
Year Dummies	YES	YES	**YES**	YES	YES	**YES**
_Cons	3.115***	2.710***	**1.817**	3.243***	2.573***	**1.374***
R-squared						
Within	0.0005	0.0168	**0.0664**	0.0276	0.0478	**0.0873**
between	0.0459	0.4506	**0.5710**	0.0443	0.4512	**0.5594**
overall	0.0226	0.2899	**0.4869**	0.0223	0.3464	**0.4778**
n	848	848	848	848	848	**848**

Moreover, the paper proposes other robustness checks starting from a second empirical analysis using a fixed effects model and a random effects model, both employing robust standard errors (Table 5.2). In this case too, the model uses the instrumental variable *Hotel School*, to solve the potential problem of endogeneity linked to the variable *Food2*. Here the model changes the specification of the variable *Food1*, considering the share of enterprises registered to the food services sector in each province-year (ISTAT). Also in this case, the Sargan test suggests that fixed effects are to be preferred. This estimation shows again that the variable *Food2* has a positive coefficient and it is highly significant. The coefficient of *Mafia* stays positive and the variable statistically significant. Table 7 also proposes additional robustness checks, following the same methodology as the first model and considering both fixed and random effects. The work starts from a baseline uses *Food2* and *Clearance*, adding subsequently the other variables one by one. In each test, the coefficient of *Food2* is positive and the variable is statistically significant *Mafia* remains with a positive coefficient and statistically significant.

[66] ***, **, * indicate statistical significance at the 1, 5 and 10 percent levels.

TABLE 5.2. RESULTS AND ROBUSTNESS CHECKS[67]

MLD	***FIXED EFFECTS***			***RANDOM EFFECTS***		
Food2 (activities registered)	0.007*** (0.002)	0.077*** (0.002)	**0.007*** (0.002)**	0.005** (0.002)	0.005** (0.002)	**0.008*** (0.002)**
Clearance	-0.588** (-0.317)	-0.693** (-0.350)	**-0.609** (-0.336)**	-0.619** (-0.292)	-0.843** (0.352)	**-0.700** (0.365)**
Mafia		2.138* (1.262)	**1.332* (0.696)**		2.781** (1.480)	**1.457** (0.868)**
Education			**0.003* (0.001)**			**0.002*** (0.000)**
Year Dummies	YES	YES	**YES**	YES	YES	**YES**
_Cons	3.475***	2.028***	**0.319**	3.590***	2.843***	**0.289**
R-squared						
Within	0.0000	0.0001	**0.0002**	0.0004	0.0064	**0.0067**
between	0.0236	0.3133	**0.5174**	0.0234	0.4096	**0.5140**
overall	0.0058	0.1319	**0.3746**	0.0063	0.2600	**0.3668**
n	848	848	**848**	848	848	**848**

3.6. Policy implications

The empirical evidence underlines the role of food and beverage services and that of mafia- type association, but also the relevance of the deterrence action. In conclusion, two main questions arise: are the current policies to contrast money laundering effective? If they are not, which policies should be adopted? The Italian Financial Intelligence Unit (2019) has affirmed that the network of cooperation between authorities is strong and the exchange of information with foreign countries become more systematic. The European legislator has often implemented the regulation related to this crime starting to pay particular attention on some business circuits. A case is that of the cash-for-gold shops. This type of activity has seen rapid diffusion throughout the territory in order to place and integrate illicit proceeds.

[67] ***, **, * indicate statistical significance at the 1, 5 and 10 percent levels.

The fifth European Directive has also increased the number of entities that must comply with anti-money laundering obligations, now including: exchange service providers between virtual currencies and legal currencies; digital portfolio service providers; gallery owners, auction house managers and antiquarians. In addition, the V directive has tightened up obligations with regard to crypto-currencies and customer identification. However, in this paper it has been demonstrated that, as well as the cash-for- gold circuit and the business related to artwork and antiquities, both included in the V European Directive, also the channel of food and beverage drives money laundering. Along this line, it could be important to act for a more relevant control on this sector, especially when this kind of activities use to frequently change the management or they are related to international transactions and current accounts. Moreover, following the approach proposed by Castaldo and Naddeo (2010), it could be also useful to incentivise the owners of these activities to remain in the legal scenario introducing some economic stimulus in the form of grants, tax allowance, contributions or co-financing. Not least, to introduce the category of food and beverage in the list of the sectors subjected to a stricter control of the entities obliged to report the suspicious transactions. Indeed, it has been demonstrated that the action of reporting suspicious transactions and in particular those that arises from circuits considered with high risk of money laundering, is considered one of the pillars of the European Directives for which the Italian FIU has played a crucial role, acting also to promote the international fight against this crime.

However, it can also be possible to find a weakness in this approach, as explained by Takáts (2011). The direct essence of this work is rooted in the title itself: A Theory of "Crying Wolf". The author makes an analogy between the alert referred to suspicious transactions, and the cry of the child in the well-known fable. Indeed, in that story, the boy calls for attention so often that, at a certain point, the repeated screaming makes no sense, and nobody believes him anymore. Similarly, this happens in the case of over-reporting during the control of potential money laundering actions. From this point of view, the precise aim of this analysis is to build a model that would show how, in the fight against the phenomenon of money laundering, the information comes not only from data, but also from the quality of the data. In this sense, the whole discourse is to be found in the relationship between the Government and intermediaries within the anti- money laundering dynamics. The Government needs to erode information asymmetry with regard to financial transactions, so it addresses the intermediaries by establishing the obligation to report any suspicious transaction, which then has to be examined by the competent authorities. Following this line, Takáts (2011) analyses three different hypotheses. First, banks should monitor suspicious transactions, reporting only the high-risk operations. In the second, he defines the situation in which banks do not carry out any kind of monitoring, whereas in the third, he analyses the case in which banks report all the transactions. The

model shows how, in terms of achieving the objective and, therefore, identifying money laundering actions, reporting operations without enucleating only those with a significant risk (third case), yields the same type of information uselessness generated by lack of monitoring. Consequently, the evidence that emerges from this analysis is that the excess of data makes more difficult to identify the cases really involved in money laundering. Therefore, considering also this alternative point of view, it could be necessary to pay more attention on the corporate training linked to money laundering and to clarify the standards that define the suspicious transactions. In this way, the entire process of monitoring would be made more efficient both *ex ante* and *ex post*.

Conclusions

This paper analyses the link existing between food and beverage activities and money laundering in Italy using panel data over the period 2010–2018. The outcomes show that the hypotheses of this paper are confirmed, i.e. the presence of the aforementioned activities and the incidence of Mafia are positively linked with the prevalence of money laundering. Moreover, the empirical results revealed that the enforcement activities related to the *Clearance* rate are highly significant. In Italy the reports of suspicious bank transactions have increased substantially in recent years, showing not only the FIU's ability to handle the increased flow of information, but also its ability to improve cooperation with domestic and foreign counterparts and with international organisations. McDowell (2006) specifies that money laundering has become more than just a normal offence, but indeed a necessity for any type of criminal due to the inevitable concealment of the original illegal sources. For these reasons, money laundering represents a complex and dynamic challenge, and the global nature of the phenomenon requires international standards and cooperation. Supervision of food and beverage activities is still difficult, however. This sector is undoubtedly the most exposed to the risk of money laundering because it is extremely widespread throughout the territory. In the medium term, it is plausible to believe that the best strategy for contrasting money laundering would allow intermediaries and business activities to reach a Pareto optimal solution, where the benefits obtained from contrasting criminal behaviour (in terms of better reputation and economic incentives) should be greater than those obtained by entering the crime market.

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Appendix A1.

VARIABLE	*DEFINITION*	*SOURCE*
ML Rate	The number of money laundering crimes reported to the judicial authorities per 100,000 resident population in each province-year.	**ISTAT**
Waste Convicted	The number of people convicted for illegal treatment, disposal and trafficking of waste per 100,000 resident population in each province-year (Artt. 256- 256bis- 258- 159- 260- 260ter- 261bis, Dlgs 152/2006; Art. 452bis, Penal Code).	**ISTAT**
Waste Crimes	The number of crimes related to the illegal treatment, disposal and trafficking of waste per 100,000 resident population reported to the judicial authorities, in each province-year (Artt. 256- 256bis- 258- 159- 260- 260ter- 261bis, Dlgs 152/2006; Art. 452bis, Penal Code).	**ISTAT**
Crime Rate	The number of crimes related to criminal actions reported to the judicial authorities per 100,000 resident population in each province-year.	**ISTAT**
Urbanisation	Persons per square kilometre in each province-year.	**EUROSTAT**
Clearance	The ratio of money laundering crimes committed by persons known to all recorded money laundering crimes in each province-year.	**ISTAT**
ML Conviction	The number of convicted defendants for money laundering crime by a final judgment to all recorded money laundering crimes in each province-year	**ISTAT**
Uif	The ratio of suspicious transactions reported to the Italian FIU to all recorded money laundering crimes in each province- year.	**UIF**
Unemployment	The ratio of unemployed workers over working age population in each province-year.	**Ministry of Education**

Appendix A3.

VARIABLE	*DEFINITION*	*SOURCE*
ML Rate	The number of money laundering crimes reported to the judicial authorities per 100,000 resident population in each province-year.	**ISTAT**
Waste Convicted	The number of people convicted for illegal treatment, disposal and trafficking of waste per 100,000 resident population in each province-year (Artt. 256- 256bis- 258- 159- 260- 260ter- 261bis, Dlgs 152/2006; Art. 452bis, Penal Code).	**ISTAT**
Waste Crimes	The number of crimes related to the illegal treatment, disposal and trafficking of waste per 100,000 resident population reported to the judicial authorities, in each province-year (Artt. 256- 256bis- 258- 159- 260- 260ter- 261bis, Dlgs 152/2006; Art. 452bis, Penal Code).	**ISTAT**
Crime Rate	The number of crimes related to criminal actions reported to the judicial authorities per 100,000 resident population in each province-year.	**ISTAT**
Urbanisation	Persons per square kilometre in each province-year.	**EUROSTAT**
Clearance	The ratio of money laundering crimes committed by persons known to all recorded money laundering crimes in each province-year.	**ISTAT**
ML Conviction	The number of convicted defendants for money laundering crime by a final judgment to all recorded money laundering crimes in each province-year	**ISTAT**
Uif	The ratio of suspicious transactions reported to the Italian FIU to all recorded money laundering crimes in each province- year.	**UIF**
Unemployment	The ratio of unemployed workers over working age population in each province-year.	**Ministry of Education**