Caterina Mazza and Aude Thevand
THE HIGH-SPEED RAILWAY
AND THE PREVENTION OF
ECONOMIC CRIMES, CORRUPTION
AND ORGANISED CRIME
1. Introduction

The main goal of this analysis is to identify which special measures (investigations, controls) have been adopted and to understand how they operate to prevent criminal infiltration in the construction of the Turin-Lyon high-speed railway, in particular, and of major public works, in general.

This study has considered the legal framework and the agreements signed in order to classify the rules which govern this major public work and manage the relations among the various subjects involved.

Moreover, the analysis considers the characteristics of the Val Susa context, where the Turin-Lyon high-speed railway work takes place, and the level of the criminal infiltration risk of this area. The results of this study also serve in designing the research instruments for the 28 MS and to implement the second part of the Project. To analyse this topic, legal and institutional documents and judicial cases have been utilised. Then, too, a series of interviews with the members of the law enforcement and of the special operational bodies involved in the investigative activities have been implemented.

2. The legal framework of the Turin-Lyon high speed railway


Three agreements between France and Italy set the legal framework of this project, in particular they regulate the international track, joining historical railway lines on both sides of the border (Saint-Jean-de-Maurienne in France and Bussoleno in Italy) and including the building of a 57 kilometers long railway tunnel.

The intergovernmental agreement signed in Turin on January 29th 2001

This agreement set the procedure to carry out the first phase of the shared part project. The agreement establishes a Developer (LTF-SAS), formed in equal shares between RFI (Rete Ferroviaria Italiana) and RFF (Réseau Ferré de France). LTF was in charge of this first phase including studies and preliminary works (the building of three access tunnels in France and the survey gallery of Maddalena in Italy; French legal rules apply on the French side and Italian legal rules apply on the Italian side).
According to this agreement, the two governments had to harmonize the rules they apply to the works during this first phase.

The intergovernmental agreement signed in Rome on 30 January 2012

This agreement modifies the previous agreement. According to this new agreement, the new name of the shared part is the cross-border section. The shared part refers now to a section from Montmélian (in France) to Chiusa San Michele (in Italy) including several tunnels with two tubes, a section in the open air, junctions with the historical railway line and annex works. The cross-border section has become, since this Agreement, a part of the shared part. This agreement defines the achievement of the cross-border section. A Public Developer, controlled by France and Italy, has succeeded LTF. The Public Developer is considered as a contracting entity within the framework of European law, and is the entity in charge of the conclusion, the performance's supervision of the contracts concerning the design, the achievement and the exploitation of the cross-border section. As the Public Developer’s head office is located in France, the agreement submits to French legal rules the conclusion and the execution of works, supplies and services contracts stipulated by the Public Developer to carry out its tasks, provided that French legal rules are compatible with European law (especially directive 2004/17/EU). National rules, which are more restrictive or contrary to European law, are disregarded for these contracts. Disputes concerning the conclusion or the performance of these contracts fall within the competence of French administrative courts; disputes concerning technical problems fall within the competence of the arbitral tribunal mentioned in the agreement; this tribunal will rely on French public legal rules provided that they are compatible with European law.

Within the Public Developer, two systems of control exist: the commission of contracts and the commission of evaluation, in order to check the respect of the legal rules in public procurements contracts. The commission of contracts is composed of 12 independent experts appointed by Italian and French governments, for a period of five renewable years. This commission checks the grounds of exclusion of candidates and gives its opinion before every decision concerning tenders. The commission of evaluation is composed of 6 members of the commission of contracts, appointed after the receiving of the tenders. The commission instructs the tenders and gives its opinion about the award of public contracts.

Therefore, reinforced measures of control are provided for the conclusion of contracts connected to the project. Attempts of infiltration by criminal organizations, e.g. mafia, should thus be detected.

The intergovernmental agreement signed in Paris on 24 February 2015

This agreement approves the established Public Developer, TELT (Tunnel Euralpin Lyon-Turin), successor of LTF, controlled by Italy and France in equal shares. The Public Developer is considered as a contracting entity in directive 2014/25/UE and is the infrastructure manager of the cross-border section according to directive 2001/14/EU. The Public Developer has therefore to be considered as a Public undertaking according the European law. This agreement provides that French and Italian governments have to make sure that the Public Developer relies on extremely “severe” contractual regulations in order to fight against risks of mafia infiltrations. This regulation has to be approved by the intergovernmental Commission. The reference to the fight against risks of mafia infiltrations in the project is the consequence of a political decision to react to many criticisms (from politicians, journalists, etc...) raising the risks of mafia infiltrations in the project because of its cross-border characteristic and the application of French legal rules which don’t take into account, at least formally, this issue. On the French side, the real existence of risks of mafia infiltration is disputed. On the opposite, on the Italian side, the presence of the mafia is indisputable (especially in that area of the Piedmont Region). In Italy, these criminal organizations are able to hack public procurements. Many people ask for the application of Italian anti-mafia rules to the contracts concluded for the railway project.

2 Articles 6 and 10 of the agreement.
3 Article 2 of the Agreement.
4 For example, among others, House of representatives, question 70588, F.-M. LAMBERT; Courrier international, Trop d’argent sale derrière le TGV, n° 1115, p. 19 ; A. BARILINI, Le Lyon-Turin, un eldorado pour la mafia, affirment les parlementaires italiens, Reporterre, 17 January 2014.
The contract regulations shall organize measures to prevent mafia infiltration in the project, which are inspired by Italian rules but compatible with European rules.

2.2. The « Règlement des Contrats »

Following a meeting on 5 February 2015, between M. Cannarsa, F. Violet and C. Gressier, the interministerial delegate in charge of the writing of the “Règlement des contrats”, the broad lines of the content of the “Règlement des Contrats” was made available to us.

Considering the supremacy of European law principle, the “Règlement des Contrats” has to be compatible with European Directives. European law contains a specific measure to prevent criminal infiltrations in public procurements: the exclusion of a candidate convicted for his participation to a criminal organization. Recital n° 105 of directive 2014/25/EU of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC rules that: “Public contracts should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union’s financial interests, terrorist offences, money laundering or terrorist financing (…). Given that contracting entities, which are not contracting authorities, might not have access to indisputable proof on the matter, it is appropriate to leave the choice of whether to apply the exclusion criteria listed in Directive 2014/24/EU to such contracting entities. The obligation to apply Article 57(1) and (2) of Directive 2014/24/EU should therefore be limited to contracting entities that are contracting authorities”. Article 57 of directive 2014/24/EU provides that: “Contracting authorities shall exclude an economic operator from participation in a procurement procedure where they have established, by verifying in accordance with Articles 59, 60 and 61, or are otherwise aware that economic operator has been the subject of a conviction by final judgment for one of the following reasons: (a) participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA5; (…)4. Contracting authorities may exclude or may be required by Member States to exclude from participation in a procurement procedure any economic operator in any of the following situations: (…) (c) where the contracting authority can demonstrate by appropriate means that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable”. According to the ECJ, a grave professional misconduct is a guilty behavior with a consequence on the candidate’s credibility, even if the fault is not judicially decided. In addition, appreciation of gravity of the misconduct requires in concreto investigations. Exclusion couldn’t be decided abstractly or automatically (for example, CJEU, 13 December 2012, Forposta SA).

In French law, the code of public procurements, article 43, refers to exclusion grounds from public procurements. However, these provisions are less restrictive than in European law. Article 43 refers to article 8 of Statute number 2005-649 of 6 June 2005, according to which persons are prevented from tendering if they have been convicted for different offences like drug trafficking, fraud, laundering, corruption, criminal conspiracy.

French law does not provide for an exclusion for gross professional misconduct, but for participation to a criminal conspiracy, similar to criminal organization in European law instead. The first article of decision 2008/841/JAI defines criminal organisation as a structured association, established over a period of time, of more than two persons acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, to obtain, directly or indirectly, a financial or other material benefit”. Article 450-1 of the French criminal code defines the criminal conspiracy as an association established to prepare crimes punished by five years of jail at least.

Article 48 of Statute number 2015-899 of 23 Juliet 2015, which will be effective by 1st April 2016 at the latest, adds optional exclusion grounds from public procurements. A company can be excluded from participation in a procurement procedure for gross violation of contractual obligation.

---

5 Participation in a criminal organization is “conduct by any person who, with intent and with knowledge of either the aim and general activity of the criminal organisation or its intention to commit the offences in question, actively takes part in the organisation’s criminal activities, including the provision of information or material means, the recruitment of new members and all forms of financing of its activities, knowing that such participation will contribute to the achievement of the organisation’s criminal activities”; or “conduct by any person consisting in an agreement with one or more persons that an activity should be pursued, which if carried out, would amount to the commission of offences referred to in Article 1, even if that person does not take part in the actual execution of the activity”.
Exclusion grounds from public procurements become more specific even if European law covers a greater number of cases: French law requires punished misconducts to justify an exclusion. Opposite to France, in Italy, measures can appear more restrictive compared to European law. In Italy, there is a white list under the supervision of Turin prefecture, mentioning reliable companies which are allowed to tender in a public procurement. So, anti-mafia measures consist in an automatic exclusion if the company is not on the white list. The said list goes further than what the European directive imposes. A Sicilian Court has recently submitted a reference for a preliminary ruling to the ECJ to determine whether European law allows a Member State to exclude a tenderer who doesn’t accept commitments to fight against organized criminality (Case C/425-14).

To conclude, we can say that the aim of the “Règlement des Contrats” is to go beyond the French rules and to introduce anti-mafia measures, while being in conformity with European directives. In conformity to article 57 of directive 2014/24/UE, article 16 of the “Règlement des contrats” would mention exclusion grounds to fight organized criminality.

Paragraph 1.1 of this article would mention that invitations to tender have to exclude a candidate if the Public Developer can demonstrate by appropriate means that the economic operator is guilty of grave professional misconduct, questioning its integrity. This article would allow to exclude a candidate connected to a criminal organization but not yet convicted for example.

The Public Developer could rely on the information provided by the Turin prefecture to exclude a candidate on the basis of a grave professional misconduct, thus adapting its approach to European law. The commission of contracts and the commission of evaluation would intervene to check the reliability of the candidates.

Finally, the “Règlement des Contrats” has a double interest: on one hand it formalizes in the French law the content of article 57 of directive 2014/24/UE concerning exclusion grounds for gross professional misconduct; on the other hand, through the notion of gross professional misconduct, the “Règlement des Contrats” enables to use anti-mafia rules in such a way as to respect European law. Paragraph 1.1 could therefore introduce the anti-mafia rules in French law. The others provisions refer to the intergovernmental agreement and European directives.

The “Règlement des Contrats”, which is TLT’s rules and regulations, won’t probably be obligatory because it seems to be an ethical code indicating good practice rules intended for TELT’s co-contracting. French administrative court, taken by excluded company, will apply French law and European law, reminded by the “Règlement des Contrats”.

3. The Val Susa area and the criminal infiltration

The history of criminal infiltration in Piedmont, the region where Val Susa is sited, begins between the 60s and the 70s of the last century. The expansion/entrenchment process of various mafia groups originating in south Italy has entailed a subsequent strong presence of such organisations in other territories (national and/or part of other countries), including the northern regions of the peninsula (Sciarrone 2009, 2014; Varese, 2011).

As shown by the Italian Parliamentary Commission of Inquiry on Organised Crime, the main mafia group entrenched in Piedmont is the ‘Ndrangheta’ which has infiltrated various sectors of society (Commissione Parlamentare, 2004, p. 217).

The territorial entrenchment of this criminal organisation is revealed by such evidences, as (a) the murder of the Public Prosecutor of Turin, Bruno Caccia, in 1983, killed by some members of the criminal groups from Calabria; and (b) the dissolution of the Council of the Bardonecchia town (in Val Susa) due to mafia infiltration. It has been the first Council of northern Italy to be subjected of this kind of judiciary action (Sciarrone, 2009, pp. 231 and ss., and 2014, pp. 175 and ss.; Commissione Parlamentare, 2008 and 2013).

The numerous ‘ndrine’ present in Piedmont have the power to decide on their own regarding criminal activities, though maintaining close links with their mafia families in Calabria. However, the relations among them are led by rigid criterions for sectioning of the territory in various spheres of influence.

---

6 For more detail on the organisational structure of the ‘Ndrangheta, see the box dedicated.
7 The ‘ndrina’ or ‘casca or family) is the base unit of the ‘Ndrangheta.
According to recent Criminal Police operations (such as Il Crimine of 2010, “Minotauro and Maglio/Albachiara” of 2011), the criminal activities of 'ndrine in Piedmont are drug trafficking, ML (Money Laundering), racket of extortions, usury, gambling, relations with political institutions for the exchange of votes and dealings with public administrators for infiltrating the construction sector. The last sector, which considers investments in entrepreneurial activities and the involvement of public administrators, is more and more relevant for the criminal organisation. In fact, the judiciary investigations show that 'Ndrangheta in Piedmont usually use intimidations for getting specific advantages, for infiltrating the entrepreneurial world, for obtaining the execution of works, in particular reference to public works such as the Turin-Lyon high speed—railway (Ordinanza San Michele, 2014, p. 59). However, to know exactly how this criminal organisation obtains public money and works is very difficult. This field is quite hard to investigate because it is closely linked to the economic legal world. In fact, the legal and illegal elements and behaviours are melted, intertwined and very hard to distinguish. Furthermore, this sector hides other crimes, such as ML, corruption, extortion and unfair competition.

The Judiciary operation “Minotauro” has shown that in Piedmont 'Ndrangheta infiltrates the construction sector both at private and public level. When the organisation is able to deal with politicians, public administrators and member of various institutions, the criminal infiltration takes place during the “allocation of public money and the entrustment of the work”: On the contrary, or simultaneously in the permeation of the legal world, the criminal infiltration takes place during the “post bidding phase” imposing bribes or forcing conditions to the winning companies (Commissione Parlamentare, 2013, pp. 104–105). The infiltration in the “post bidding stage” allows criminal groups to control the building site, using usury and extortion or taking agreements with other enterprises. In this way, the construction site is safe regarding damages in exchange of a percentage of the total public work fee (illicit guardiania). The control of the works execution allows to criminals to obtain sub—contracts and to force materials and manpower acquisition (see WP “The infiltration of criminal groups into public works: strategies and methods”).

The criminal infiltration during the post bidding phase is typical of Italian mafias. In fact, it offers several advantages with a partial risk of sanctions. In this field, criminal behaviours are difficult to investigate and prove, then harder to punish.

'Ndrangheta organisation

The 'Ndrangheta is a criminal organisation born in the Calabria Region during the XIX Century. Its organisational structure is horizontal and, at the same time, hierarchical with a network configuration. The base unit of this structure is the 'ndrina (or cosca or family) entrenched in an area or in a district of a city and called with the family name of the boss. A rigid and complex hierarchy, which can consider up to six levels under the chief, governs each 'ndrina. A set of different 'ndrine, which are based in the same territory, form a locale. The latter is managed by three actors: the capobastone (who has the power of life of his affiliates and the right of absolute obedience); the contabile (a bookkeeper who manage the financial matters); the capocrimine (responsible for the crimes).

A precise set of rules governs the entry into the clan (affiliation) and the behaviour of its members. The family connections play a key role in joining the members of each 'ndrina. In fact, the 'Ndrangheta is distinguished from other mafia organisations for its organisation based on family. Marriages help to strengthen the internal relations to each clan and to increase the number of affiliates. Family ties are also a safety factor of various 'ndrine and secrets. It is quite difficult that arrested members of 'Ndrangheta denote their relatives or reveal information that could harm their family. It is not by chance that 'Ndrangheta is the criminal organisation of South Italy with the lowest numbers of cooperatives witnesses.

However, over the years, the members of this organisation have tried to expand the network creating relations with actors who are part of various social spheres, in particular the political and institutional world. In the early 90s of the twentieth century, after a period of serious conflicts, the various groups operating in Calabria stipulated a series of peace agreements, which had gathered them together in three districts (Jonica, Tirrenica and Città). These districts, called Camere, are bodies aim at working out disputes. They were already present during 70s also in the expansion areas of 'Ndrangheta, such as Canada, Lombardy, Liguria, but not in Piedmont (Varese, 2011, p. 51).

During 90s, an authoritative, collective and elective body was established for governing also internal disputes. This body, called the Provincia or Crime, plays a managing role for whole the criminal organisation.
In fact, it is recognized as authoritative by all ‘ndrine present in Italy and abroad. This structure guarantees stable economic and military resources, and the subsequent strength for intimidating, as well as the bargaining power with the legal sphere of society (the political, institutional and entrepreneurial world). The ‘Ndrangheta has increasingly become able to infiltrate and integrate itself in the society thanks to the creation of Santa during the 70s. It is a secret and analogous criminal organisation which allowed the affiliates of ‘Ndrangheta to come in contact with actors of the institutional world - politicians, public administrators, entrepreneurs, members of secret services, and/or of masonry, and/or subversive groups-. The ‘Ndrangheta is also a transnational mafia organisation. In fact, it is entrenched in territories far from the original ones (the Calabria), emigrating to various regions of central and north Italy (in particular in Lombardy and Piedmont), and to different European States (Germany, Belgium, Netherlands, French, East Europe), and to other continents (such as USA, Canada, Australial). The expansion process has allowed ‘Ndrangheta to diversify its criminal activities: in the Northern Italy, the organisation aimed at controlling the territory infiltrated different sectors of the legal economy, mainly the allocation of public funds; in Germany, in Eastern European Countries and in Australia, the criminal association reinvests the proceeds of the illegal activities; in States of other continents, the ‘Ndrangheta controls the most important routes for drug trafficking.

The city of Turin and the Val Susa - the Italian valley near to the French borders - are the two areas more affected by criminal infiltration in the construction sector (DNA, “Relazione Annuale”, dicembre 2007 cit. in Commissione Parlamentare, 2008, p. 217). With particular reference to Val Susa, different institutions have recently shown concerns for possible episodes of criminal infiltration into the works execution of Turin-Lyon high speed-railway and for the jurisdiction conflicts due to its transnational character.

The matter of concern for risks of criminal infiltration in Val Susa, are based both on several indicators of risk linked to the context; and some evidence from judicial cases and ambiguous episodes which occurred during the selection procedures for the work construction of the fence anti-intrusion for the La Maddalena’s building site in Chiomonte. The risk factors are due to the historical presence of ‘Ndrangheta in the Val Susa which has become an area of attraction for mafia investments since the early 60s with the expansion of tourism and the resulting strong demand for housing development. It is not by chance that during the 60s and the 70s, especially in the tourist hub of Badonecchia, the number of construction companies mainly from Calabria region and the use of new manpower illegally employed were drastically increased. Across the years, starting with Rocco Lo Presti and Francesco Mazzaferro, the ‘Ndrangheta has entrenched itself in this territory as far as to control a relevant part of construction sector and to create close and advantageous links with local institutions. As we said at the start of this paragraph, exactly the Council of Bardonecchia has been the first local administration of Northern Italy to be dissolved for mafias infiltration. The latter has been proved during a judiciary investigation which involved local public officials, companies of construction and the Mazzaferro’s clan of ‘Ndrangheta (For more details on the context features, see Varese, 2011, pp. 54-72; Sciarrone, 2009, pp. 281-300). The evidence from judicial cases will be presented in the next paragraph.

4. The evidences from the existing judicial cases

The evidence from judicial cases show a very complex reality and such intertwined relations at the ground level of various exploitation attempts of the public procurement. At the beginning of May 2005, the Judiciary Court of Turin started to investigate various public biddings which have taken place across the years connected with the Turin-Lyon high speed railway work. The Magistrates concentrated their attention on the former-Vice-Minister of Infrastructures Ugo Martina, the General Director of LTF Comastri and on those responsible for the direction of works Benedetto. The former-Vice-Minister and other people around him were suspected of bid
rigging/collusive bidding, finalising the award of the contract for the realisation of an explorative tunnel of Venaus for the Turin-Lyon railway, to the businessman, Vincenzo Procopio, the manager of SITI srl. Further, they were suspected of irregular commitments for the realisation of other public works related to the infrastructures of Piedmont. Specifically they investigated for:

- illicit assessment to SITALFA SpA for the realisation of the road variant SS 589 and the attempt to divert to LIS srl a public assessment for another portion of the same road;
- illicit assessment for the public works related to the regional road nr 232 variant of Cossato - Valle Mosso - Trivero - Canton Colombo - Mottalciata - Rotatoria Mottalciata.  

As shown by the charges, the investigations on public bidding of the Turin-Lyon high speed railway preparatory work are closely linked to the investigations on the collusive tendering for awarding of road works in the Valley (mainly the variant road Avigliana) in which are involved various subjects: such as the former-vice-Minister of Infrastructures Martinat, members of Agenzia Torino 2006 and ANAS, managers of SITALFA SpA and SITAF SpA, including Marcellino Gavio, an entrepreneur who controlled a great part of the road works of the Piedmont, in relation with Ligresti and members of the Consotium Valsusa (De Benedetti e Rastello, 2013, p.101).

The Public Prosecutor Cesare Parodi asked for the conviction (at least 4 years in prison) of all defendants. However, two of them, the Italian former-vice-minister Martinat and the business man Gavio, were already deceased. Instead, in 2011, at the end of the trial, the businessman Vincenzo Procopio was convicted to one year and three months in prison, the president of SITAF Giuseppe Cerutti to one year in prison, the general director of LTF Paolo Comastri to eight months. The alleged crimes were, according on the individual positions, collusive tendering in the management of public procurement of the explorative tunnel of Venaus (Turin) for the High-speed railway; the road variant Cossato-Valle Mosso (Biella); the securing of the state road nr. 589 in Pinerolo (Turin); the external road variant of Tortona (Alessandria); the connection bridge of Gassino (Turin); the road variant of Avigliana (Turin); the tunnel of Fenestrelle (Turin)12.

Other interesting evidence makes clear the risks of criminal infiltration in the Turin-Lyon high speed railway. According to the pre-trial detention order of the Turin Court, named Ordinanza San Michele, the 'Ndrangheta (with particular reference to the 'ndrina of San Mauro Marchesato which acts in Turin) was deeply interested in getting subcontracted orders within public works. According to the Magistrates, this 'ndrina tried to achieve its goals using an entrepreneur, Toro Giovanni, as mediator. In the judicial documents, we can read that Toro "operated within a system of management and splitting up of the public procurement through illicit intermediation activities which allowed him the advantage of getting commissioned works and allow the criminal organisation [the 'ndrina of San

---

8 Art. 353, paragraphs 1-2, of Italian Criminal Code. The other actors involved were: Desiderio, a member of the company Agenzia Torino 2006; Compitelli, the Director of Metropolitane Milanesi SpA. See, Tribunale Ordinario di Torino, 2011; Gaino A., 2005.

9 From the report of the authorisation Committee, “Request of authorization to use wiretapping”, for the former-vice-Minister Martinat, presented at the Italian Council Presidency the 15th December 2005.

10 Gavio, through the Gruppo Gavio, then the Argo Finanz had the 33% of Impregilo Group SpA. The latter company was composed also by Autorstrade per l’Italia Sp.A - Gruppo Benetton (33%) and Immobiliare Lombardia - Gruppo Ligresti of Stefano Ligresti (33%). In 2009, the Impregilo Group, for having made works of Turin-Lyon high speed railway, has been convicted of environmental damages and has been charged with exploitation of manpower and with mafias collusions. Nevertheless, this firms has been able to get various millionaire public funds for the realisation of Turin-Lyon railway work, Impregilo was the general contractor of LTF S.a.s. Impregilo, as responsible of materials, equipments acquisition and services for this public work, had subcontracted all its commissions. It is worth noticing that Impregilo is also the majority company of the Consortium for the Turin-Milan High speed railway (see, Laboratorio OffTopic, 2012, pp. 10–12).

The Consortium Val Susa was established in may 2011 by several entrepreneurs who wished to compete in public bidding of work connected with the Turin-Lyon high-speed railway. Originally, the members of the Consortium Val Susa was: Escavazioni valsusa srl, Retunna srl, ITALCOGE spa, Ferraris sas, GeoMont srl, Edilgrimaldi snc, GEOVALSUSA srl. The membership of the Consortium could help each company for awarding a public work.

11 The management company of the Frejus Motorway.

12 From the archives of the newspaper “La Repubblica”: http://torino.repubblica.it/cronaca/2011/02/08/news/appalti_truccati_per_lavori_stradali_otto_condanne_e_sei_assoluzioni-12217664/.
Mauro] to straighten its influence in the economic sector” (Ordinanza San Michele, 2014, p. 935).

As a result, Toro has been investigated and arrested for mafia association in various activities, including the creation of “preferential channels for infiltrating public works executions, among which the realisation works of Turin-Lyon high speed railway” (Ordinanza San Michele, 2014, p. 6). In fact, Toro had developed relations with different entrepreneurs who competed in public bidding for the Turin-Lyon railway: in particular Lazzaro Ferdinando and Odetto Fabrizio (Ordinanza San Michele, 2014, pp. 936-939).

As shown by wiretapping, Lazzaro Ferdinando was linked to Toro for illegal activities in the treatment of waste (Ordinanza San Michele, 2014, pp. 592-598 and pp. 938-942). These cooperation links were clear during the execution of works, in August 2011, for three flyovers on the Turin-Modane railway commissioned by RFI in the villages of the Val Susa: Chiusa San Michele, Vaie and Sant’Antonio of Susa. The relations between Toro and Lazzaro, which extended over several years, was aimed at disposed of waste, demolition of material from other construction sites for roads and railways (Ordinanza San Michele, pp. 939-940). Waste was crushed and re-used as cement-bound granular material to be illegally buried in new building sites, including the one of the Turin-Lyon railway public work. The site where these waste material were processed was run by Toro. And, as shown by wiretapping, it was in a strategic position near to the building site of Turin-Lyon high-speed railway work (Ordinanza San Michele, p. 495).

Nevertheless, the exclusion of ITALCOGE (by Lazzaro) from the Turin-Lyon railway work’s construction site due to its bankruptcy (see footnote n. 13), Lazzaro Ferdinando continued to be engaged in the Chiomonte’s building site, using his great influence in the Val Susa Consortium and exploiting his recognised role as unique spokesperson with LTF (Ordinanza San Michele, p. 941). By virtue of his role, Lazzaro Ferdinando was able to involve Toro Giovanni in the public works allocated to ITALCOGE and then to ITALCOSTRUZIONI (Ordinanza San Michele, p. 942).

However, bankruptcy of ITALCOGE and the new conflicts between Lazzaro and Cmc (by Lazzaro) from the Turin-Lyon railway work’s construction site due to its bankruptcy (see footnote n. 13), Lazzaro Ferdinando continued to be engaged in the Chiomonte’s building site, using his great influence in the Val Susa Consortium and exploiting his recognised role as unique spokesperson with LTF (Ordinanza San Michele, p. 941). By virtue of his role, Lazzaro Ferdinando was able to involve Toro Giovanni in the public works allocated to ITALCOGE and then to ITALCOSTRUZIONI (Ordinanza San Michele, p. 942).

Moreover, Toro ties him to Odetto proposing to use the Toro Srl site as a base of his company, the CO.GE.FA., for the Turin-Lyon high-speed railway work (Ordinanza San Michele, p. 950).

This judicial evidence shows the high risks of criminal infiltrations in the Turin-Lyon high-speed railway and the great interest of ‘Ndrangheta in this public work. The judicial cases point out that the main methods used for gaining control of public works are intimidation and collusion.

---

13 Lazzaro Ferdinando was the owner of the ITALCOGE SpA, one of the winning firms of the public bidding for the execution of the preparatory works of the La Maddalena, the building site in Chiomonte for Turin-Lyon high speed railway. On 28 July 2011, the Tribunal of Turin certifies the bankruptcy of the ITALCOGE. On 27 May 2011, Lazzaro Laura, sister of Lazzaro Ferdinando, as unique administrator of the Iminvest srl established, with her husband Curcio Francesco and with her brother-in-law Conti Mica Francesco, the firm ITALCOSTRUZIONI. This company, formally directed by Curcio Francesco, on 29 November 2011, contracted with the official receiver, Dr. Vigna Michele, a rent act of a company branch with the permanent commitment to buy the ITALCOGE firm. In this way, the ITALCOSTRUZIONI obtained the means, the legal authorizations (transport of accounts of third parties and operating in the environmental sector), the certifications for competing in public procurement and public works, and also the replacement in the VALSUSA CONSORTIUM. According to the judges of the Turin Tribunal, Lazzaro Ferdinando was the de facto chief of the ITALCOSTRUZIONI, and also one of the main representative for the RFI and LTF, societies which manage the works for the Turin-Lyon high speed railway (See, Ordinanza San Michele, 2014, p. 939).

14 Odetto Fabrizio was managing director of CO.GE.FA SpA, sole administrator of TRAMA srl, and council member of Consortium EDILMACO.

15 In 2011, ITALCOGE SpA of the Lazzaro’s family obtained from Cmc the subcontract for managing the construction works of a fence for the La Maddalena’s building site in Chiomonte. Cmc (Cooperativa muratori cementisti) is an Emilian cooperative established in 1901. Today, it is the most important Italian company for cement, with a relevant role in Europe and in other continents. Cmc operates for the realisation of relevant public works, of high sleep railway works, and of infrastructures and buildings. Originally, it was linked to PCI (Italian Communist Party), today to PD (Democratic Party). See, www.cmcm gruppo.com; Laboratorio OffTopic, 2012, pp. 14–15.
Another issue of concerns, as claimed by some members of the NoTav Movement\textsuperscript{16}, are related to procedures for the award of work in the fence anti-intrusion of the La Maddalena's building site in Chiomonte. They initially had been subcontracted to \textit{TALCOGE SpA}. When that company went bankrupt, the direction of these works was "endorsed" to \textit{Martina Service Srl} which formed a joint venture with \textit{ITALCOSTRUZIONI Srl}. However, towards the end of 2011, \textit{Martina Service Srl} also failed on charges of fraudulent bankruptcy. Members of the NoTav Movement think this passage of the management of the work did not take place on a legal basis (NoTAV, 2012; Laboratorio OffTopic, 2012, p. 21). These concerns are strengthened by the evidence which were proved by the investigative operation named "Minotauro" that reported the existence of a network of 'Ndrangheta's members, politicians, public officials, entrepreneurs operating in the area of Turin. In particular, this judicial investigation showed links between Antonio Bruno Iaria (the chief of a 'Ndrangheta's "locale") and the Lazzaro family (see Gaino, 2012).

Finally, it is worth underlining once again that, as shown by several reports of the \textit{Commissione Parlamentare Anti-mafia} (Italian Parliamentary Commission Anti-mafia), the high risks for criminal infiltration in major public work in Piedmont, with particular reference to Turn-Lyon public work are more importantly focused on the phase of post bidding procedures for the allocation of public funds. According to several institutional subjects and public officials (judges, officials of the local home affairs office,...) the 'Ndrangheta most likely will try, not so much to pass each phase of the bidding procedures to carry out the work, but to have the control of the building site. It is not by chance, in the last year, the DDA (\textit{Direzione Distrettuale Antimafia} - Anti-mafia District Directorate) has begun a monitoring activity on the Val Susa: basically the police forces every month have to inform the DDA on the felonies committed in the territory which are indicators of criminal infiltration in the construction sector - such as intimidation, threats, extortion and damages (Commissione Parlamentare, 2013, p. 112).

Then, too, thanks to its transnational character the 'Ndrangheta is able to diversify the criminal activities, coordinating them in an advantageous way, and to adapt itself in a new context bypassing the rules. All these abilities are mainly important when such criminal groups try to infiltrate into transnational public procurement and public works, such as the Turin-Lyon high speed railway.

5. The special measures to prevent criminal infiltration in the public procurement

The Italian anti-mafia and anti-corruption system has established a set of institutions (composed by five units of police forces and the Investigative Anti-mafia Directorate -DIA, led by the Italian territorial prefectures) which carries out the necessary and compulsory controls for preventing the criminal infiltration in public procurement. The \textbf{prefectures start and coordinate the inspections aimed at issuing anti-mafia certificates} which attest that a firm is completely legal. In fact, the Legislative Decree n. 159 of September 6, 2011, as code of anti-mafia laws and preventive measures, considers two different typologies of documents depending on the threshold of the public contract: (a) the \textbf{anti-mafia communication}, required for stipulating contracts in which the amount is higher than 150.000 € and lower then the communitarian threshold; (b) the \textbf{anti-mafia information}, required for stipulating contracts in which the amount is higher than communitarian threshold and for the authorisation of sub-contracts in which the amount is higher than 150.000 €.

The \textbf{anti-mafia communication} is released by prefectures to companies that wish to compete in a public bidding when they are not subjected to measures in the application of article 67 (effects of preventive measures) - art. B3 (field of implementation of the anti-mafia documents) and art. B4 (definitions).

For the release of this document, the Prefecture in charge investigates by consulting the Unique National Database (\textit{Banca Nazionale Unica}) or others existing databases. If these investigations don't reveal the existence of some legal obstacles, the Prefecture immediately grants the realising

\textsuperscript{16} These concerns emerged during some interviews made in October 2014 by Paola Manfredi and Caterina Mazza.
authorizing anti-mafia communication. Instead, if the company under investigation is not surveyed in the various data bases or if legal obstacles emerged, the prefecture can carry out other kind of controls within 30 days. After these additional investigations, if the Prefecture doesn’t issue the anti-mafia communication, the company can sign the contract simply by filing an anti-mafia self-certification (see below).

In this case the public funds are paid on the condition of receiving, in the future, the anti-mafia communication. Then, if legal obstacles emerge, the already signed contract is revoked. The deadlines for the release of documents are ruled by the article 88 of the Anti-Mafia Code.

In case of the presence of mafia infiltration attempts, the prefect adopts an prohibitive information rather than a communication (art. 89-bis).

The validity of anti-mafia communication is six months from its acquisition (art. 86).

The anti-mafia information certifies the absence of legal obstacles (loss, postponement and ban as ruled by article 67) and the lack of mafia infiltration attempts aimed at affecting the choices and/or the orientations of companies (art. 86).

Similarly to the anti-mafia communication for the work higher than 150,000 € and lower than the EU threshold, the issuance of the anti-mafia information is immediate when no legal obstacles or mafia infiltration attempts emerge by the consultation of the Unique National Database. Otherwise, the Prefect orders the needed investigations aimed at the issuance of the information within thirty days. In such cases these controls are very complex, the Prefect can use an additional forty-five days for organizing the other investigations.

When the Prefect adopts an anti-mafia banning information, several authorities (such as the other Italian Prefectures, the police forces, the public administrations, the DIA, the Chamber of Commerce, the Authority which controls the public contracts) have to be informed. Then, the Prefect also checks the subsistence of the legal premises for the application of special measures of managing, support and monitoring of companies for preventing corruption (article 32 pr. 10 of d.l. June 24, 2014, n. 90 - became law n. 114/2014), informing the President of National Authority Against Corruption (ANAC). When the information is not issued within the length of time established, the companies can draw up the contract for the work execution and the payments of public funds will depend on the future releasing of the anti-mafia documentation (as for the communication). If, at this stage, a company receives a banning information, the contacting authority has to break the contract or to annul the authorization for the sub-contract.

The validity of anti-mafia information is twelve months from its acquisition (art. 86).

The authority for releasing both the anti-mafia communication (art. 87) and the anti-mafia information (art. 90) is given through the Prefecture of the area where the individuals, companies, associations of firms or consortium are located or have the legal headquarter (and not the Prefecture where the building site is located for the execution of the public work).

Moreover, the article 89 of the Anti-mafia Code considers that contracts and subcontracts for urgent public works, services and supply and for renewal provisions are drawn up simply with the acquisition of anti-mafia self-certification. In these cases, the entrepreneurs have to declare that no legal obstacles of loss, postponement and ban as ruled by article 67 are present.

As regard to the Anti-corruption law, it is worth referring to the Guide Lines for using anti-mafia special measures of managing, support and monitoring of companies - article 32 of d.l. June 24, 2014, n. 90 and by the Legality Pact signed on July 15, 2014 by the Home Office and the President of ANAC. The President of ANAC can ask the Prefect to use of these measures to affect the power of administration and managing of companies involved in legal actions for serious crimes against the Public Administration (PA) or in symptomatic situations of criminal conducts (art. 32 D.L. n. 90/2014). When a firm winning tenderer shows illegal conduct, it is possible to use these special measures to reaffirm legality and transparency in order to finish the execution of public work.

The article 32 of D.L. n. 90/2014 confers the power to start these special measures to two authorities: (a) the President of ANAC, when situations attributable to corruption emerge (co. 1); (b) the Prefect, when the company received an anti-mafia banning information (co. 10). In the first case, the Prefect in charge adopting the special measure is one of the territory where the contracting
authority has its legal head office (then where the public work takes place). In the second case, the Prefect in charge is of the area where the company under-provision has its headquarters.

Concerning the investigative procedures for issuing the anti-mafia communication, prefectures merely consult the database SDI (contains the data collected through the work of the police), or simply verify whether or not there are impediments to issuing them. Less than a year, they also use other databases and platforms like Si.CE.ANT and the system RICA17.

For issuing the anti-mafia information, the Prefecture starts investigations by writing to the five units of Police (Financial Guard, Police, Carabinieri Corps, the State Forestry Forces, Fire Brigade). The Prefecture identifies individuals and their living family members of the firms being controlled. After the investigations, the final decision depends on the Prefect who consults the investigative body only for ambiguous cases.

Only some Prefectures carry out the “informazione breve” (a fast track procedure): when the consultation of the databases does not reveal crimes, the Prefect requests to the police forces for more detailed investigations. If they do not respond within 20 days, the Prefect may issue the information without waiting for the results of the police activities. The time is a critical matter. The Turin Prefecture, for instance, receives around 1000 requests for anti-mafia information every month. The kind of compulsory investigations are completely changed when the D. lgs. n. 159/2011 is entered into force. However, the method of work used is substantially unchanged, resulting in a slowness that obstructs the police activities. As a result, the problem of time risks to frustrate the results of controls.

Concerning major public work, the Italian system considers the creation of the Joint Task Force (JTF) for each major public work (such as GITAV for the Turin-Lyon High-speed railway work; GICEX for the Expo 2015), established with the DM March 14, 2003 which became enforceable through the D. Lgs. n. 190/2002 (art. 180 co. 2). The JTF work together with the Italian Prefectures at peripheral level. Whereas, at central level another national body works, the CCASGO (Committee of Coordination and Monitoring of the major work), giving the guidelines for the peripheral units.

The Italian system has also established a scheme of controls and supervision on the execution of the public contract. A set of institutions (composed always of five units of police forces and the Investigative Anti-mafia Directorate - DIA, led by the Italian territorial Prefectures), named local joint task forces, inspects the building sites during the execution of the public works. Every unit of the local task force controls, in reference to its expertise, various aspects: the accesses to the building site and all people who work there; the means of transport and the materials used; and the accounts.

In reference to major public works, the inspections are implemented by both this local task force and a Joint Task Force (JTF) specifically created for each major public work. the JTF is the body for control of all companies that work in major works, of all individuals who have access to the building site, of all materials used and the means of transport. The JTF checks the information sent by the contracting authority and write down in a weekly building site book and a monthly report. The role of the JTF and its relations with the contracting authority, are established by a legal pact drawn up and complying with the guidelines of CCASGO. It is worth remembering that the Inter-Ministerial Committee for Economic Planning (C.I.P.E.) on the 3 August 2011 has established that legality pacts are compulsory for each major public work and approved the guidelines for the CCASGO. These kinds of agreements are settled in the post-tender stage to address three orders of matters: (a) to check the commitment procedures of the public work (to control the company contract winner and all the other work executors, creating a database of all the subjects involved); (b) to prepare for the operative phase (e.g., check the materials to be used to build); (c) to control the building site.

17 The Si.CE.ANT is an operating system tested (since January 15, 2009) at the Prefectures of Rome, Naples and Catania. The use of Si.CE.ANT would simplify and accelerate the procedures for issuing the communications, automating the uploading of applications. This operating system could be conformed to the coming Unique National Database. Moreover, the Prefectures also use another database, the RICA system, for verifying the validity of information about the applicant bodies.
6. References


