

# The Enforcement of the Rule of Law in the Financial Sector: The Strategic Synergies among Judicial Authority and Financial Supervisory Authorities: Research Paper- Carlo Alberto Giusti- eCampus University, Italy

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## Research Paper

A recent research work conducted in the Bank of Italy analyzed the relationship between the slowdown in economic activity in Italy in the years of the crisis - from 2008 to 2011 – e the intensification of criminal incidents. The results show that the economic crisis had a impact only on certain types of criminal activities, ie on property and financial offenses especially on those who do not require particular criminal abilities, such as theft. In line with the recent European directives, economic crimes must be combated by pursuing both the objective of law enforcement and that of economic development. A balanced strategy of prevention and suppression must be found upon rules that lay down clearly formulated obligations; that avoid intrusive instruments and rigid procedures; that do not overburden honest businesses; that institute mechanism of enforcement and sanctions that are swift, effective and proportionate to the seriousness of the infractions; that provide incentives for intermediaries to collaborate with the structures that fight money laundering; and, in conclusion, that strengthen domestic and International cooperation among authorities. The States that is most aware of the problem, perceiving that the criminal organizations are most vulnerable when they seek to pass the proceeds of the crime into legitimate channels, have long concentrated their efforts on the protection of the financial system. Different institutional players are called to collaborate to the enforcement of the rule of law in the financial sector, and to contribute to the achievement of the results set. A major role is played by the Judiciary, by the Supervisory Authorities, the Financial Intelligence Unit (UIF) established at the Bank of Italy, and by the Investigation Authorities. It's easy to infer, therefore, that the intensity and quality of the institutional cooperation between the supervision and judicial authorities represent an essential and fundamental element to achieve an effective prevention of illegal activities, since the exchange of information on different skills. Collaboration with the judiciary helps each of the two sides to pursue in better their institutional objectives. It occurs in the awareness of the diversity of the roles performed and in full compliance with the guarantees and the rights of defense of the subjects concerned, in turn a cornerstone of the rule of law, an indispensable defense of legality. The necessary of dialogue between the Supervisory Authority and the Judicial Authority

is definitely demonstrated as well as the great benefits provided at national level to the financial system. For this reasons it will must be a fundamental effort of the European Legislator to find the best way of cooperation between the European Central Bank and European Public Prosecutor Office.

The essential components of a good institutional system are the protection of rights fundamental rights and property, fair regulation, good administration, efficient provision of essential public services. However, there is no good governance without legality: the ability to prevent, repress and punish illicit behavior is an integral part of a favorable institutional framework, as well as the civil growth, even in a development balanced economic. Although it is not easy to isolate the relevance of this last element compared to that of the rest of the institutional framework and other essential factors for growth (such as human capital and social), some estimates of the effects that it exert on economic development and social issues are starting to be available for our country as well. At the macro-economic level, for example, a work carried out by the Bank of Italy proposes an overall estimate of the losses - in terms of gross domestic product - that can be directly associated with organized crime.

## Methodology

Analysis of the data provided by the Bank of Italy, the Office of the Public Prosecutor's Office of Rome and Milan, the Financial Information Unit and the European Central Bank. The study is carried out at the level of local labor systems and the trend of the conjuncture at the local level comes represented on the basis of information from a database of company balance sheets (CERVED). The crime measures used are based on the news of crime received by the judicial authorities by the State Police.

## Sample

It is focused attention on the two regions of southern Italy subject to more recent infiltration, Puglia and Basilicata, comparing its economic development in the decades before and after the spread of the contagion mafia, occurred in the late '70s, with that of a group of central North regions that had similar initial socio-economic conditions.

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## Empirical Model

The empirical results show that, concurrently with the infection, Puglia and Basilicata moved from a growth path that was superior to that of the group of regions initially similar, but not infected, to a lower one. The decrease in GDP per capita growth attributable to the onset of organized crime can be estimated at 20 percentage points in thirty years, and mainly reflects minor private investments.

## Findings

Due to the excellent results obtained by the strong and continuous collaboration in Italy, the Bank of Italy (banking supervisory authority) and the magistrate, also other European countries and the European Union have now perceived the need for close collaboration between the supervisory bodies and control with the common aim of countering at best organized economic crimes. In this sense, the progress made by the European Commission, which is trying to shorten the time of European Public Prosecutor Office's stabilization, is now very important, with a clear vision to strengthen the close contact between the banking supervisor (ECB) at European level. and the investigating authority (EPPO).

## Conclusions

Legality and economic development are interdependent. An efficient rule of law, with balanced regulation and the effective capacity to enforce it, create an environment conducive to development, favor investment, and attract the best energies human. The widespread illegality alters the market mechanisms and upsets the incentives in favor of unproductive or harmful activities; slows growth by reducing collective well-being. Neither have they achieved injustices and inefficiencies that go to the detriment of all, but especially the most honest and weaker.

In the financial sector in particular, illicit and criminal interferences endanger the stability of the operators involved and the freedom and efficiency of the market. The prevention and the fight against

Financial crimes are therefore an essential part of the activity entrepreneurial. Strict compliance with the law is the cornerstone of sound and prudent management, on the the Bank of Italy supervises. Unfortunately, prolonged periods of recession offer one more opportunity to crime. Yes increases the impact of some crimes against property.

Vulnerability may increase individuals and businesses to usury, thus allowing crime to extend its own control over the legal economy. The fall of confidence in the financial system and in the activities that it offers increased use of cash and the use of safe haven assets such as gold and other metals valuable, facilitating the use of less traceable means of payment. The Bank of Italy is strongly committed to fighting illegality in the field financial, according to the competences and with the tools that the law assigns them. Crimes like the false accounting, Recycling, patrimonial unfaithfulness, endanger integrity banking activities, interfere with supervision, alter competitive mechanisms.

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