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Agenda dynamics in the European Union : the interaction between the European Council and the European Commission in the policy domain of organized crime

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C h a p t e r 4

The policy problem of organized crime

After showing the theoretical lens used in this study, this chapter introduces the policy domain of organized crime. The aim is to show the relevance of this topic for this study from an analytical point of view, while becoming acquainted with it. The chapter has four parts. The first section gives a brief overview of the justification for studying the domain. The second part explains more in detail the methodological reasons for using OC as a policy theme in this research. In doing so, the origin and development of the organized crime domain in the EU framework, as defined by the Treaties, are presented. The third section deals with the debates revolving around the conceptualization of OC and explains further the implications for how to measure the policy issue. At the same time, the literature on organized crime is reviewed. In the final section, a summary is provided.

4.1. The subject of study

As argued by Thurber, “[l]ocating the real policy agenda of the government requires an in-depth and prolonged analysis” (Thurber, 2011:vii). Such a comprehensive study is less facilitated when many policy areas, not to say the whole agenda, are observed in the long run, as this presupposes a more generic type of study. As Princen has claimed, limiting the range of policy domains is necessary when conducting a profound empirical study on agenda dynamics because the researcher shall have a clear understanding of the policy area and debates around it (Princen, 2009:44). Studying a single policy field enables us to conduct a thorough and longitudinal study and obtain detailed insights on the processes.

The policy domain of organized crime is analyzed to illustrate the dynamics of the European Council agenda and the Commission agenda in the period 1975–2013. It is a vehicle for this purpose. This is a methodological and empirical choice for the reasons explained in the remaining of this chapter.

In short, as will be shown below, organized crime is important for this study because, in contrast to other policy fields, this domain allows us to observe the behaviors of the institutions under similar and balanced conditions. In addition, focusing on OC allows us to become substantially familiar with the topic and the discussion in and outside academia on its definition. These circumstances promote not only to make better sense of the processes experienced by the institutions, but also to better measure the phenomenon. Last but not least, organized crime has been barely studied from a political science approach, in particular using an agenda setting lens. Altogether these elements facilitate obtaining a firm grasp on EU agenda dynamics, while also contributing to fill a gap in the literature on OC.

4.2. Organized crime as an EU policy theme

As claimed in the literature, not all issues are the same and not all institutions respond similarly to them. On the one hand, there are diverse attributes, such as solubility and complexity, that may vary between issues (Peters, 2005). It would be thus misleading to assume that all issues reach the agenda equally. In reality, issues do not have the same opportunity to enter it (Bachrach and Baratz, 1962). Actually, a key question in agenda-setting studies is why some issues make it onto the agenda while others not. On the other hand, it would be deceptive to think that all types of institutions attend issues alike. Some issues may promote more (stable patterns of) political conflict than others (Lowi, 1964, 1972). In addition, “[t]he institutional and political framework within which polities operate favours consideration for some issues while discouraging consideration for others” (Princen, 2007:22). In other words, institutions are biased (Schattschneider, 1960).

In the context of the European Union, these conditions are problematic when conducting empirical research, given also the complex features of EU policymaking. For instance, in this political system policy-making organizations have overlapping competences and in some cases even distinct institutional designs—as the European Council and the Commission have. In addition, while —contrary to countries— the EU does not have faculties to deal with all policy areas (TEU:art.5),⁴⁷ over time its

⁴⁷ The EU has limits on what policy issues can address given the subsidiarity principle, by which “the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States... [and instead] be better achieved at the Union level” (TEU:art.5).

competences have expanded and it has become involved in an important number of fields.⁴⁸ Actually, as claimed by Lelieveldt and Princen, “it is increasingly difficult to name a policy area in which the EU plays no role at all. Nevertheless there are vast differences in the degree of EU involvement in various areas” (2015: 181). On top of these circumstances, EU policymaking entails a *sui generis* arrangement that requires an active participation of supranational and/or intergovernmental organizations, depending on the policy filed.

In this sea of policy domains possible to study and variations in the performance of EU institutions, organized crime stands out because the European Council and the Commission deal with this domain more or less similarly. In this sense, OC is referred to in this study as a ‘comparable’ policy domain for these institutions. Moreover, OC is not an extreme area in that, on the one hand, EU competences over the years have developed in the middle between supranational and intergovernmental spheres. And, on the other hand, the evolution of OC in the EU framework also stands in between traditional and new policy domains. OC is thus called here a ‘mid-range’ field. For these reasons, on the whole organized crime represents a baseline to study the dynamics, as it provides a reference point to look at the behaviors of the institutions in an impartial and moderate setting, in relation to the bunch of complex possibilities in the EU system.

4.2.1. A comparable policy domain

The agendas of both institutions attend organized crime relatively in equal terms, in contrast to the way it happens with other policy domains. Each institution is inclined to handle particular issues. For instance, the European Council gives attention specially to macroeconomics and the Commission to health. In general there are issues regularly more important for each of them, just as there are issues commonly less salient. An example of the latter situation is science and technology particularly for the case of the European Council. However, organized crime is under the political radar of both institutions alike somewhere in the middle of saliency. Put differently, these actors react almost equally to OC. It seems that neither institution is the ‘owner’ of organized crime. It is thus a comparable domain for them.

This situation is appropriate for the comparison of the trends in the attention of each institution and the analysis of their interaction, given that neither political body clearly dominates in this domain. This is relevant in analytical terms, especially considering

⁴⁸ For an overview of general areas, as officially established by the EU with the Lisbon Treaty (the last treaty revision so far), see TEU:art.3. For more specific areas, as analytically conceived by scholars, see for instance Lelieveldt and Princen (2015: 180–182) and Nugent (2010: 303–306).

central propositions of the Agenda Dynamics Approach by which, on the one hand, it is expected that the intra-dynamics are different due to the distinct institutional designs and, on the other hand, it is argued that the intra-dynamics affect the inter-dynamics. Given the features of organized crime as a comparable policy domain, a bias stemming from the domain itself can be discarded, enabling us to conduct a study of both institutions based on conditions of similarity. Otherwise, it would be practically prearranged to obtain from the analysis the result that the agenda dynamics of the European Council and the Commission differ.

The conclusions exposed here were drawn after conducting an examination of the literature, as described in the following part.

In search of the policy field

Given the existence of numerous policy areas and in order to get an impression of a potential one, I started by looking at problems that have a generalized opinion and agreement in society, that is, valence issues —as opposed to position issues.⁴⁹ According to the literature on valence politics, crime is an “excellent contemporary example” of a valence issue because “almost everyone wants protection from the security threats posed by criminals” (Clarke et al., 2011:238).

A central reason why basically all people share this view is that organized crime aims at generating profits out of illegal methods and networks, provoking a widespread damage. Criminal organizations “represent a multibillion dollar set of networks that prey on every aspect of global society, distorting markets, corrupting governments, and draining huge resources from both” (World Economic Forum, 2010). Criminal networks put in risk not only fragile states, but also developed countries. The impact in different parts of the world can vary, “but the common feature is that organized crime negatively affects the life chances of ordinary people: it undercuts key institutions, damages the environment, distorts or impedes economic growth and it fuels conflict” (Global Initiative Against Transnational Organized Crime website). In this regard, two worldwide developments have played a significant role in the active evolution of organized crime as a global problem: the ending of the Cold War and the ongoing globalization. It is true that these events have stimulated the liberalization of the economy and trade, as well as facilitated migration flows and expansion of

⁴⁹ Valence and position issues are distinguished in the literature on valence politics, a notion in electoral studies that explains electoral behavior and preference of voters, based on valence issues (Clarke et al., 2011). Valence issues are contrary to position issues, on which conflicting views may emerge (Butler and Stokes, 1969: 189). An example of a position issue is death penalty in the United States, where the social debate has mainly centered on pro- and anti-moral arguments (Baumgartner et al., 2008:6).

communications, but they have brought ‘opportunities’ also for criminals activities, due to a deficiency in global governance. As a consequence, over the years “[o]rganized crime has diversified, gone global and reached macro-economic proportions (...) fueling corruption, infiltrating business and politics, and hindering development” (United Nations, 2010:ii). Particularly in Europe, “[s]erious and organized crime is an increasingly dynamic and complex phenomenon, and remains a significant threat to the safety and prosperity of the EU” (Europol and British Chamber of Commerce, 2013:foreword).

In effect, in the European Union, “[o]rganized crime is a threat to European citizens, businesses, state institutions as well as the economy as a whole”, according to the Commission (DG Migration and Home Affairs website). In the view of the Council, OC is mostly a menace “to society as we know it and want to preserve it”, given that criminal organizations “pervade the various structures of civil society, and indeed society as a whole” (Council of Ministers, 1997:Chapter I). Following a threat assessment made by the European Police Office (Europol), OC represents a “significant threat to the internal security of the EU and its citizens”, who are directly and indirectly harmed by it (Europol, 2011:47). For instance, it is estimated that drug trafficking affects the life of millions of persons who consume drugs; VAT fraud activities have a serious impact on taxpayers’ interests and governments’ supply of public services, due to the loss of billions of euros from public revenue; trafficking of humans employed as irregular workforce generates unfair competition in the job market; and counterfeiting of medicinal products puts in risk the health and safety of citizens (Ibid). Altogether, OC causes severe damage not only to the “financial integrity” of the European Union, but also to its “foundations” (PWC Belgium and PWC Netherlands, 2011:17). According to Eurobarometer, organized crime in the EU worries its citizens. European citizens considered this problem a main concern uninterruptedly for 8 consecutive years, in the period between 2003 and 2010, even above any other domain within the JHA area (Standard Eurobarometers 59–73).

In this way, taking into account the academic claim and the concerns from policymakers, practitioners and society, a hint of where potentially to look at to conduct this study was obtained. Accordingly, OC seemed like a policy domain that the European Council and the Commission may prefer to address likewise.

Therefore, once identifying some features of the problem globally and in the EU, I observed the few existing studies on the attention of the European Council and the Commission to policy issues in general. This provided evidence that confirmed the initial hint.

On the one hand, previous work on the European Council has demonstrated that this institution devotes considerably more attention to three “core” themes, namely, foreign affairs, governance, and macroeconomics—from a pool of more than 20 policy domains analyzed (Alexandrova et al., 2012). The field of crime is relatively at the intermediate level. Issues that regularly receive less consideration are, for example, science and technology and social policy. In addition, research on the institution’s attention to the problem of organized crime has argued that “OC is not systematically traded off when other matters push the Heads of State or Government to address them” (Elias and Timmermans, 2014:172). Also according to the study, a less crowded European Council agenda is not necessary for OC to get access. This is a remarkable feature of this domain because issues in general compete for attention against other issues, promoting considerable variations in the way they are taken up (or not) by policy-making institutions. On the other hand, previous research has shown that the Commission gives particular attention to agriculture, external trade, health and transport—more than to the remaining fifteen policy issues examined (Alexandrova, 2014). Further, as demonstrated by earlier work, the broader domain of Justice and Home Affairs “is almost equally addressed by the two institutional venues” (Alexandrova, 2017:764). Within JHA, the attention of the European Council and the Commission to crime fluctuates on average similarly on their agendas over time, while other issues, such as education and culture, are practically neglected by both institutions (Alexandrova, 2014).⁵⁰ All in all, this domain appears to be positioned intermediately in a sort of spectrum of ‘core-noncore’ policy topics for both political bodies.

4.2.2. A mid-range policy domain

While being a comparable policy issue suits organized crime well in this study, this situation is not necessarily sufficient, considering EU’s complex policymaking. Accounting for the formal policy process in this field becomes a sort of requirement to be indeed able to capture a baseline of how the institutions behave under similar and balanced conditions. This is important to do, even when it has been argued in the literature that the arrival of issues on the agenda “does not depend on a legal competence in the EU treaties” (Princen, 2012:43). It is relevant because it is reasonable to think that it can be a factor that may provide an advantage, if the faculties of one institution prevail in the process over time, in comparison with the competences of the other institution. Thus, if we are to conduct a longitudinal study of agenda dynamics of political institutions entailing a different nature—the European Council

⁵⁰ For research on their interaction regarding specific events (e.g. Climate and Energy package of 2008) that are “characterized by a high degree of involvement of the two institutions” in the years right before and after the Lisbon Treaty, see Bocquillon and Dobbels (2014:29).

being an intergovernmental body and the Commission a supranational one—, it seems wise in this study to analyse a domain that does not face completely one side of the coin, but that it is rather a mid-range field.

Organized crime in this regard is appropriate for this research because neither institution notably leads in policymaking. This contrasts to, for example, foreign affairs and common market issues, where the involvement of the European Council and the Commission—respectively—is and has been specially high. The organized crime domain has rather changed over time in such a way that it is an area neither purely intergovernmental nor purely supranational. Organized crime policies have been developed over time between the EU as a whole and the member states. This domain is not extreme as other fields, such as culture—where the EU has almost no competence—and monetary policy—where EU's authority is practically absolute. Moreover, OC has an intermediate level of evolution, in relation to other areas that were created when the EU originated, like agriculture, or relatively recently, such as bioterrorism. This characteristic conveniently fits the research. To conduct a longitudinal study, a domain established already in the origins of the EU may not be entirely appropriate because the European Council was not formally functioning yet, which may give a (dis)advantage to one of the two institutions. Moreover, a domain embedded in the EU institutional framework only in recent years may not provide enough time frame to identify underlying dynamics.

These conclusions are based on an analysis on the institutionalization of organized crime as an EU domain and the policymaking role of EU institutions, according to the Treaties. The conclusions are also supported on the literature. The examination is described below.

The institutionalization of organized crime in the EU framework

The history of OC as an EU policy domain started officially in 1993 with the entry into force of the Maastricht Treaty. This treaty incorporated for the first time organized crime and many other policy domains. It formalized diverse policy fields based on a classification scheme of three areas known as 'pillars': first pillar (or Community pillar); second pillar (or Common Foreign and Security Policy); and third pillar (or Justice and Home Affairs area). OC was included in the third pillar. This pillar established that police cooperation shall be promoted "for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs cooperation" (TEU: art. K.1). This was done with a view to achieve the free movement of persons in the EU. In this way, OC acquired a political housing in the EU framework under the JHA area.

With revisions to the Treaty, the jurisdictional framework of OC evolved. The treaty has been amended so far in three occasions, in 1999, 2003 and 2009. These amendments are known as Amsterdam Treaty, Nice Treaty, and Lisbon Treaty, respectively. With the Amsterdam Treaty, the third pillar changed its name from JHA to Area of Freedom, Security and Justice (AFSJ). Some organized crime issues related to the free movement of persons, such as human trafficking, were transferred to the first pillar. From all three amendments, the Amsterdam Treaty brought most of the changes for the AFSJ area, but specially for the organized crime domain. The Treaty established that “crime, organized or otherwise, in particular terrorism, trafficking in persons and offenses against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud” should be prevented and combated (TEU: art. 29). The aim was to provide safety to EU citizens in the AFSJ. With the Nice Treaty, the OC domain did not suffer significant changes. Finally, with the Lisbon Treaty, the ‘pillar’ structure was abolished. Both the third and first pillars were subsumed and organized crime remained under the jurisdiction of AFSJ.

As a consequence of the amendments to the Maastricht Treaty, the policy-making process in the domain of organized crime has also suffered changes. Initially, the Maastricht Treaty established the so-called ‘intergovernmental method’ for the third pillar. Also known as ‘consultation procedure’, this method empowered the member states, rather than the Commission, to propose initiatives in the areas of terrorism, drug trafficking and other forms of organized crime, as well as in any other matter in the JHA area (TEU, art.: K.1, K.3). The Commission was entitled to combat only fraud (ibid).⁵¹ The Council was responsible for deciding on initiatives by unanimity (TEU, art.: K.3), previous consultation with the Parliament (TEU, art.: K.6). With the Amsterdam Treaty, the same method was maintained for most OC issues. However, there was a major modification for the Commission: the scope of its power of initiation broadened. It was entitled to propose proposals to combat organized crime, terrorism, trafficking in persons, drug trafficking, arms trafficking, corruption and fraud (TEU, art.: K.1, K.6). The conditions for the Council and the Parliament remained the same (TEU, art: K.6, K.11). For those OC issues that moved from the third to the first pillar, a different process applied: the ‘community method’. Under this method, also known as ‘codecision procedure’, only the Commission was able to issue proposals. The Council decided by qualified majority voting together with the Parliament. Thus, with the Amsterdam Treaty, the Commission was enabled to deal with all sorts of organized crime problems. However, a transitional period

⁵¹ The Commission was, however, entitled to initiate legislative acts regarding other JHA matters, such as migration policies (TEU, Art. K1, K3).

of five years was established for those OC issues related to the free movement of people, such as human trafficking. This means the Commission enjoyed the exclusive power of initiative on these issues and other JHA matters in the end of 2004. During this transition the Council continued deciding by unanimity, after consulting the Parliament. As from the Lisbon Treaty, mostly the community method, now called 'ordinary legislative procedure', applies for all types of OC issues (TFEU:art. 74).⁵²

In addition, since the end-1990s, the so-called 'multi-annual programs' have given shape to organized crime policy. This has been promoted to a large extent by the Amsterdam Treaty and its goal of achieving freedom, security and justice in the EU. These programs are strategic action plans of 5 years adopted every cycle by the European Council, in order to define the key priorities to be achieved in all domains in the area of justice and home affairs. During the research period, three were established, namely, the Tampere Programme (1999–2004), Hague Programme (2005–2009), and Stockholm Programme (2010–2014).

After recognizing these developments, the involvement of the institutions was identified by observing the three 'pillars'.⁵³ This gave us an indication of whether the conditions between the institutions are more or less similar. As mentioned, organized crime belongs to the JHA area. Before commenting on this pillar, let us first examine the other two. On the one hand, the Community pillar is basically the territory of the Commission, especially because the institution has the monopoly in policy initiation. On the other hand, the Common Foreign and Security Policy pillar is more the dominion of the European Council because most decisions are intergovernmental. In this sense, the JHA pillar stands between the other two pillars. Issues in this area involve the participation of supranational and intergovernmental levels. In effect, as Trauber and Ripoll have argued: "[w]ith the changing involvement and decision-making powers of the EU's supranational institutions, the AFSJ provides a quite unique setting" for the discussion on the role of EU institutions and policy dynamics (Trauner and Ripoll Servent, 2016:1418). Looking at the development of the policy process in the organized crime domain, we can identify that the rules have been modified over time (cf. Trauner and Ripoll Servent, 2016), passing through different positions in the policy-making spectrum. In the beginning, when OC was established as a policy field by the Maastricht Treaty, intergovernmental institutions were primarily leading the policy process. Some years later, this situation changed with the Amsterdam Treaty when many OC issues were decided for the first time by supranational institutions

⁵² In some cases, however, member states can also initiate proposals (TFEU: art. 76).

⁵³ Although the conceptualization of the EU setup in three 'pillars' ended with the Lisbon Treaty, it is used here as a reference to distinguish the type of policymaking across EU policy domains.

and many other matters remained under the intergovernmental say. In the previous decade, the Lisbon Treaty moved the process towards the supranational side. This situation is what currently applies.

In the same line, as part of the JHA area, organized crime is a policy field whose level of authority in decision-making has changed over the years between “shared competences light” and “medium”, according to Börzel (Börzel, 2005). These concepts refer to the arena where the competences on policy issues are located. In the former level, the competences reside mostly at the national level; while, in the latter level, the competences are divided between the national and EU level (Börzel, 2005:221–222). Thus, following Börzel’s distinction of the level of authority vis-à-vis- issue areas, organized crime is a mild policy field rather than extreme as other topics in which the EU is either completely involved or (almost) not involved, such as monetary policy and culture, respectively.

Finally, during the examination of the development of the organized crime domain, it became evident that this field has also a middle level of evolution, in comparison with other areas. As observed, the embedment of OC in the EU framework happened in the beginning of the 1990s. In this way, OC stands in an intermediate position, in relation to other EU policy domains. It is not a traditional domain, such as agriculture, institutionalized since the origins of the EU (Commission, 2012:3). Also it is not so novel as the field of bioterrorism, which started to be tackled under the EU remit in the beginning of the new century (Princen and Rhinard, 2006:1126).

4.3. Debates on the definition of organized crime

There is no consensus in the European Union on the meaning of organized crime. Each member state has its own conceptualization, as extensively argued by OC scholars (Den Boer, 2001; Von Lampe, 2008; Allum et al., 2010; Vander Beken, 2012; Allum and Boer, 2013). However, “most European countries agree that each has an organized crime problem” (Paoli and Fijnaut, 2004: 2) and share that they “have to some extent drawn attention to organized crime” (Den Boer, 2001: 265). Notwithstanding this, no European Union-wide approach exists.⁵⁴

⁵⁴ The EU is however not an exemption. OC is a topic that has no shared definition in the world. Attempts to achieve global uniformity have been done, though. The United Nations started negotiations in December 1998 to convene an instrument to support the fight against organized crime (2004:1). This international organization was triggered by “the rapid growth in the scale and scope of the problem in the post-Cold War” (United Nations, 2010: 25). Two years later, a Convention against Transnational Organized Crime, also called Palermo Convention, was adopted (United Nations, 2004). This instrument finally entered into force in September 2003 once ratified by 147 countries, out of 185 (UN Treaty Collection website). It is

This is the current situation, also in spite of two major EU policy instruments adopted to define organized crime and contribute to fight the problem. The EU approved a Joint Action in 1998 (Council of Ministers, 1998) and a Framework Decision in 2008 (Council of Ministers, 2008). The latter instrument amended the former. In the two cases, the EU centered its efforts to define mainly the actors —or criminal organizations—, albeit broadly. When we compare the definitions between the two instruments, they differ in the ultimate aim of a criminal group. The Joint Action established three possible objectives: to achieve the perpetration of a crime, to get resources, and to disturb governmental activities.⁵⁵ The Framework Decision focuses on the idea that any criminal organization pursues only an economic goal.⁵⁶ Regarding the offences, or the types of crimes, no specific definition was included in any of the two instruments. However, the Joint Action in article 1 established that, in order to identify the criminal activities, it was necessary to refer to the list of crimes contained in another document: the Europol Convention. When we look at this Convention, some illegal activities included are drug trafficking, human trafficking, trafficking in works of art and terrorism (Council of Ministers, 1995:art. 2 and its annex).⁵⁷ The Framework Decision discarded such list. This policy instrument attempted to establish the meaning of an offense, but in reality it did not make significant changes. One of the most notable modifications was done to article 2,

the instrument with major relevance at the international level to tackle OC. It conceptualizes the notions of organized criminal group and serious crime (United Nations, 2000: Art. 2). Nevertheless, as acknowledged by United Nations itself, the Convention includes neither a precise definition nor a list of the types of crimes that should be considered part of (transnational) organized crime (2010: 25). According to the international organization, it was conceived in this way for two important reasons. First, there is no consensus on its meaning and, second, OC is a constantly-transforming matter. Therefore, “[i]n order to accommodate this complexity, a precise definition was omitted” (Ibid).

⁵⁵ “A criminal organization shall mean 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, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities” (Council of Ministers, 1998: art. 1).

⁵⁶ “(A) criminal organisation means 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” (Council of Ministers, 2008: art. 1).

⁵⁷ The complete list of crimes includes: terrorism, unlawful drug trafficking, trafficking in nuclear and radioactive substances, illegal immigrant smuggling, trade in human beings, motor vehicle crime, illegal money-laundering activities, as well as other international criminal acts against “life, limb or personal freedom”—such as illicit trade in human organs and tissue, kidnapping, racism and xenophobia-, and against “property or public goods including fraud —like trafficking in cultural goods and works of art, counterfeiting and piracy, forgery of administrative documents, computer crime and corruption-, as well as “illegal trading and harm to the environment” —e.g. trafficking in arms, smuggling of animal species and environmental crime- (Council of Ministers, 1995: art. 2 and its annex).

which refers in a generic way to the types of criminal “conduct” (Council of Ministers, 1998, 2008: art. 2). The Framework Decision added the title “Offences relating to participation in a criminal organization” to this article, heading that the Joint Action did not have (Ibid). The content remained practically the same.⁵⁸

4.3.1. Implications for a better measurement

While the concept of organized crime is in general heterogeneous, its case is not peculiar from a political science perspective. All issues are intrinsically multidimensional and have a “malleable” nature (Rochefort and Cobb, 1993: 59). As Rochefort and Cobb have argued: “The first thing to note about the malleability of public issues—their openness to competing interpretations as well as factual distortion—is that they are not unique in this way” (Rochefort and Cobb, 1993: 59). In the context of the European Union, it seems that there is actually no problem that is easily definable and solvable, given the cross-linkages between issues that, before the opening of the EU borders, were practically only national. Nowadays, problems in one member state cannot exist outside of the scope of the other members. Issues are thus intertwined in the EU, which seems to hinder a homogenous way to define them. Organized crime is thus in principle similar to other public issues.

The point here is that the property of malleability shall be taken into account because it has methodological implications on how to measure the policy problem, especially because we want to make a comprehensive research of agenda dynamics by means of the analysis of OC in particular. After all, “[l]imiting the scope of empirical study is necessary because examining agenda processes in-depth requires a firm grasp of the substantive policy issues and debates in the areas under study” (Princen, 2009: 44). In addition, OC scholars have acknowledged that organized crime is “very much constructed by those who study it, fight it and encounter it” (Allum and Boer, 2013:138). Thus, to avoid conducting a partial study and imposing the researcher’s own view on the policy problem, it is fundamental to know the discussion revolving around organized crime and become acquainted with the different ways this problem is considered. Let us find this out.

⁵⁸ Accordingly, two types of conduct from criminal organizations can be considered offenses: “(a) 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; (b) 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” (Council of Ministers, 2008: art. 2).

To begin with, the lack of conceptual homogeneity in the EU lies on different factors. One reason seems to be that, as has been claimed by scholars, the problem of organized crime varies importantly across countries in the European Union (Fijnaut, 1998:277–278). In addition, the “complex” nature of organized crime as a problem that has negative effects in a number of spheres—from social and economic to political and cultural—provokes highly controversial discussions, discouraging to reach a shared approach (Longo, 2010:15). Another motive is that “[a]ll definitions mirror a certain way of looking at this phenomenon”, thus some stress certain aspects of organised crime while others remark different features (Van Duyne, 1996:343).

Also a reason is that in practice organized crime usually involves several problems simultaneously, such as trafficking in drugs, smuggling of people and illegal trade in arms (Europol and British Chamber of Commerce, 2013:2). Related to this is that organized crime is in constant change. It tries to adapt and cope with the existing and varying conditions, as well as with the legal setting where it is immersed, as argued by the Council of Europe: “Organized crime does not take place in a vacuum but in an ever changing environment. It is a dynamic process adapting to new opportunities for crime, to resources and skills available to potential criminal as well as to law enforcement and other control efforts. It may take different forms in different societies” (Council of Europe, 2005:19). Take the case of cigarette smuggling in the EU. This form of crime has been an option for criminal groups to circumvent the high penalties imposed to drug trafficking. And the reason is that the cigarette smuggling is a crime with lower fines and extensive profits (Europol, 2006, 2011). Further, organized crime groups have moved from a hierarchical structure with a well-established configuration to a rather loose network with a mutable operations’ scheme (Council of Europe, 2005:20; United Nations, 2010:27). As a result, “[t]oday, organized crime seems to be less a matter of a group of individuals who are involved in a range of illicit activities, and more a matter of a group of illicit activities in which some individuals and groups are presently involved” (United Nations, 2010:29).⁵⁹

⁵⁹ Organized crime is however not a recent phenomenon. Its emergence dates back to long time ago in Europe and in other places around the world. As a term, its first appearance happened in the United States somewhere between the late 19th century (Woodiwiss, 2003:4; Paoli and Fijnaut, 2004:24) and the beginning of the 20th century (Von Lampe, 2001:104). However, far before its coinage, organized crime manifestations were present (United Nations, 2010:25). When the term originated, it had no specific meaning but it often alluded to professionals, such as politicians or lawyers, who conducted crimes in an ostensible organized context (Woodiwiss, 2003:4). Over the years, the term turned into an “organized crime control framework” with focus on drug regulation (Ibid: 25). In this way, it reached the international agenda in the early 1960s with the establishment of the United Nations Single Convention on Narcotic Drugs, as a result of the US strong pressure and influence (Ibid). The spread of the American minting to the other side of the Atlantic seems to happen somewhere in the mid-1970s (Paoli and Fijnaut, 2004:31). The concept was imported in Europe with the idea of an “illegal enterprise”, where a criminal organization

A final explanation is that OC has an intractable character because, not only criminal organizations “frequently operate a range of activities simultaneously: trading in tobacco, drugs, people, armaments, pornography and many others” (Europol, 2013:2). But also, with a view of reaching their financial goal, crime organizations operate mostly hidden and undercover. However, OC sometimes commutes from the underworld to the upperworld. Here a link between the illegal and legal spheres may happen when actors from both areas either ‘compete’ for a market (turning part of it black) or take advantage of each other’s characteristics to promote their activities and profits. This is what Passas has called “antithetical and symbiotic relationships” (Passas, 2002).

As a consequence, organized crime entails a wide palette of conceptualizations. This can be identified when looking at scholarly research and the work of practitioners. For instance, among EU countries this problem may vary from mafia-related in Italy with the *Cosa Nostra* and the *’Ndrangheta* (Paoli, 2004) to terrorism-associated in Spain with the Basque separatist organization *ETA* (De la Cuesta, 2004), to mention only a few.⁶⁰

In general OC may be considered an umbrella concept that embraces all sorts of criminal activities under it, such as drug trafficking, human trafficking, and fraud (Council of Ministers, 1995). It may be also linked specifically to terrorism (Makarenko, 2004). Sometimes it may instead include terrorism within its scope (European Council, 1996).

All these ways to look at the problem contrast with a conceptualization that entails a more individualistic character. In this sense, organized crime is defined as a separate phenomenon, different from specific crimes such as money laundering or corruption (Beare, 2003:xv). OC may be also studied in relation to white-collar crime, by which legitimate businessmen are conceived to serve also as criminal entrepreneurs (Ruggiero, 1996).

In contrast to its activity-based definition, organized crime may be seen instead as an actor-based problem, highlighting “the criminal not the crime” (Harfield, 2010). Here the focus is on “the concept of criminal organization” (Cohen, 1977). As a consequence, a pronounced distinction between activities and groups of organized crime is present (Hagan, 2006).

Additionally, OC may be more in general defined stressing its qualities as, for instance, ‘organised’ crime (Finckenauer, 2005), ‘transnational’ crime (Edwards and Gill, 2002; Allum and Gilmour, 2012) or ‘serious’ crime (Dorn, 2009).

—similar to a legal corporation in its structure and way of operation— is active in market areas outside the law, but whose commodities are demanded by consumers (Ibid: 28–31).

⁶⁰ For approximately 180 definitions of organized crime by scholars from all around the world and diverse international organizations, see Von Lampe (2015).

Taking into consideration all these ideas in the discussion, a broad catalogue on organized crime issues was developed (see Appendix 1) for data collect purposes. This analytical tool was also used to support the development of a codebook on OC issues (see Appendix 2), which is a more refined analytical construct created a priori to conduct most part of the empirical analysis. Both instruments considered the different perspectives on how OC has been considered by academics and policymakers, based on the analysis on the debate, as just described. These tools avoided a limited view in the analysis of the policy problem. They also helped define what to measure exactly, circumstance that is relevant given the 'malleability' of policy issues. A detailed description on the way the catalogue and the codebook were elaborated is given in the chapter that follows, which deals with the Methods.

Last but not least, after reviewing the literature with a view to become aware of central debates, we realized that there is another significant reason for selecting OC to study EU agenda dynamics: filling a gap in the literature. It became evident that thus far the policy field of organized crime has been subject of limited work from a political science perspective, particularly in the area of agenda setting. There is no systematic study on they way political actors in the European Union have dealt with the problem of organized crime as a policy theme in the long run. In addition, no study has analyzed the policy processes involved in the development of this domain stemming from the role of EU institutions.

4.4. Summary

This chapter presented diverse features that make this domain analytically appropriate in this research. This was done to justify its analysis as a means to identify the dynamics of the European Council and the Commission in the long run. We observed that it is a comparable and mid-range policy field in the complex EU political system. That is, in contrast to how it happens with other policy domains, over time the attention of the European Council and the Commission to the OC topic has fluctuated likewise and OC policies have been produced between intergovernmental and supranational levels. This enables a study of the institutions based on conditions that discourage analytical advantages. In addition, we realized that OC is a malleable policy problem and that this has implications for how to collect data and measure the phenomenon. Finally, we also identified that there is little research on organized crime that follows an agenda-setting approach. The following chapter explains the methods used in this research project.

