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**Investigative and prosecutorial strategies to more effectively countering illicit firearms trafficking (IFT): some thoughts in the light of the Italian Practice**

by:

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**Introductory remarks: main characters of IFT in Italy: the prominent role of mafia groups**

In Italy the illegal trade of firearms in Italy has been for long a constant matter of concern, for several reasons. Above all, Italy hosts very powerful organised criminal groups (namely the Italian mafia organizations) who appear among the main drivers of the illicit firearms market in Europe. Moreover, Italy's geographical position makes it a strategic location for trafficking routes, via the Mediterranean and the Balkans, to continental Europe.

According to Italian police and judicial sources IFT does not aim primarily to produce profits, serving more as an organisational method for structuring and strengthening mafia groups operational capabilities to commit other offences (such as homicides, extortion and drug trafficking), as well as maintaining the control over the territory.

This “instrumental character” of IFT may help to explain a salient feature of criminal proceedings dealing with mafia organizations. Indeed, the strategic plan of the investigation, in general, aims to identify the leaders and affiliates of the association, and to unveil its main criminal activities and recycling channels, without worrying too much about the origin, channels and method of supply of the weapons used by the members of the organization.

Basically, the investigations focused on the 'history of weapons' only occasionally, when the interceptions offered indications in this direction, or in the light of information provided by mafia turncoats (the so called pentiti).

### **Strategic areas of intervention**

From above picture, it has become clear that effective investigation and prosecution of IFT and related offences (both nationally and internationally) require comprehensive, integrated, multilayers and mutual reinforcing strategies.

First of all, it is important that States parties of the Firearms Protocol furtherly enhance their commitment to harmonize domestic legal frameworks on firearms (and with the aim to both reduce the risk of forum shopping by criminal groups and to strengthen transnational investigations, international law enforcement and judicial cooperation against IFT).

In this area common efforts should address 3 priorities:

i) Firstly, since most of illicit firearms are originally legally manufactured, the regulation of licit firearms is of striking importance to tackle IFT. Measures such as shared classification criteria of firearms, common strict standards on control of the acquisition, possession, circulation and even the ban of certain firearms, could indeed positively contribute to preventing the leakage of licit firearms to the illicit market.

For instance, several investigations undertaken by Italian Practitioners revealed that the existence of weapons classification criteria that vary greatly from country to country may severely hamper investigation and prosecution of IFT offences.

To this aim, the new firearms directive of the EU, adopted in 2017 (which is binding for EU Member States) should be taken as a good legislative practice also by non-EU Member States, with the aim to adjourn their domestic regulatory framework on licit firearms accordingly. This, of course, in respect of national legal traditions.

ii) In order to prevent the diversion of licit firearms into the black market, States parties of the Firearms Protocol should also fully explore all the measures encompassed in other relevant international instruments, such as the Arms Trade Treaty, especially with the purpose to introduce human rights criteria for transfers of SALW and end user certificates into national legislations regulating arms trade.

iii) Further efforts of harmonization are also needed with reference to the legal framework on the traceability of firearms.

To this purpose, in addition to provisions and obligations already included in the Firearms Protocol, States parties outside the EU should carefully consider the normative framework contained in the already mentioned EU Firearms directive, which has considerably strengthened legislative measures aimed at effectively tracing illicit firearms, especially introducing very tight rules in the crucial area of marking.

The second key point I would like to touch on deals with the enhancement of the acquisition and information exchange on firearms among practitioners, which lies at the heart of the strategies to effectively countering IFT.

The picture emerging from information obtained by Italian judicial and police authorities confirm that IFT constitutes one of the most difficult illegal markets to monitor (both domestically and internationally), and on which particularly fragmented information is available.

Notwithstanding the already existing international mechanisms such as the INTERPOL Illicit Arms Records and Tracing Management System and the International Tracing Instrument, still limited quantitative and qualitative data is available to properly assess the nature and scale of IFT in several regions of the world.

In the light of relevant provisions embodied in the Firearms Protocol States parties should promote regional and cross-regional projects and studies, especially focused on:

- Strengthening information exchange and collection of data on seized firearms, including in relation to related judicial cases;

and

- Increasing capacities of national authorities in target countries to collect, register and analyse data on seized firearms and illicit firearms trafficking.

These initiatives could be built on the (Illicit Arms Flows Questionnaire) data collection methodology, already experienced by UNODC in the last outstanding 2020 Global Firearms Report; and should pursue both strategic priorities and practical goals, such as:

- domestically, to contribute to enhance the capacity of national authorities to effectively prevent, detect, investigate and prosecute illicit firearms trafficking and related offences; as well as to increase their ability to conduct risk and threat assessments;

- internationally, to support closer cross-border coordination and cooperation between law enforcement and judicial authorities within and among the target countries.

By way of examples, the expected outcomes of these actions could be:

- to identify firearms trafficking trends and patterns affecting the target countries, as well as challenges, progress, lessons learned and best practices (arising from law enforcement actions and relevant judicial cases, and in exchanging information on seized firearms and illicit trafficking; and thereby promotes the practical implementation of the Firearms Protocol);

and

- to identify technical assistance and capacity-building needs in relation to IFT in targeted countries.

Finally, with the aim to *operatively* improve investigative capacities and cross-borders coordination efforts among law enforcement authorities, as well as international judicial cooperation, Practitioners should more pro-actively exploiting both:

i) the potentialities and synergies offered by the Firearms Protocol and the Palermo Convention, especially in terms of special investigative techniques and joint investigations;

and

ii) the supporting role of existing international and regional agencies, involved in the fight against TOC (Eurojust, Europol, Interpol, etc.).

To this aim I would like to quote, as a recent best practice, a wide joint operation involving Italian police and judicial officers, in close cooperation with the Austrian authorities, and with the effective support of Eurojust which, in 2019, dismantled an international ring, trafficking firearms to supply to Camorra and Ndrangheta).

This case was a brilliant example of transnational coordinated investigations and judicial cooperation between authorities of different countries, revealing the ability of

practitioners to resorting cumulatively to a variety of measures and instruments regionally and internationally available for effective investigations and prosecution of IFT offences.

These tools involved, among other things:

- i) controlled deliveries and combined surveillance;
- ii) the resort by the Italian authorities to an European Investigation Order (EIO), proactively channelled to the Austrian authorities and broadly supported by Eurojust, which triggered a parallel Austrian investigation;
- iii) and a spontaneous exchange of information that, thanks to the outstanding and professional cooperation of the Austrian Police and the Prosecutor's Office, was ensured for the overall period of the investigation, allowing to obtain exceptional results.