Article title: Brief Considerations On Living Law Relations Between Prefectural Interdictive And Voluntary Judicial Control Of Mafia Smell Companies

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Preprint statement: This article is a preprint and has not been peer-reviewed, under consideration and submitted to ScienceOpen Preprints for open peer review.

DOI: 10.14293/S2199-1006.1.SOR-.PPZ7FCA.v1

Preprint first posted online: 19 September 2021

Keywords: Judicial control, Prefectural interdictive, Anti-mafia information, Covid-19

BRIEF CONSIDERATIONS ON LIVING LAW RELATIONS BETWEEN PREFECTURAL INTERDICTIVE AND VOLUNTARY JUDICIAL CONTROL OF MAFIA SMELL COMPANIES

The paper investigates the phenomenon of mafia infiltrations into the entrepreneurial fabric, a danger that can exponentially increase in the period of Covid-19 pandemic. Among the tools which the so-called anti-mafia code (Legislative Decree no. 159/2011) provides to prevent the danger of mafia infiltrations, the “voluntary” judicial control aims at cleaning up “mafia smell companies”, addressees of prefectural disqualification orders. The research perspective aims to highlight critical issues caused by possible “overlapping” between the judgment of prevention on requests for “voluntary” judicial control, and the subsequent administrative judgement on legitimacy of the prefectural disqualification order.

Keywords: Judicial control, Prefectural interdictive, Anti-mafia information, Covid-19.

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Introduction

Over According to the first data collected by experts, in the Covid-19 age organised mafia-type crime is about to invest huge sums obtained from illegal sources in the economy, particularly in companies in difficulty .

The business for the Mafia consists in the possibility to infiltrate the “healthy” economic fabric, to attract into its “orbit” companies that face a liquidity shortage, due to the economic difficulty caused by pandemic.

The majority of the Italian economic fabric consists of small and medium-sized companies, in both high technological rate sectors (e.g., pharmaceutical, electronic/optical, electromedical), and in less technological rate ones (e.g., the manufacture).

According to a recent ISTAT survey, companies with low or medium technological content represent nearly 50% of all enterprises, 37% of workers and more than 30% of added value, in contrast to sectors with high technological content, which correspond to just 1,4% of all enterprises, 5,2% of employment and 8,4% of total manufacture added value, although these sectors have a five times bigger average size and a double productivity compared to low technological content ones, even with similar profitability .

It is enterprises with low technological content, which traditionally attract organised crime . In fact, these last are characterised by an unwillingness to innovation and a heavy dependence on domestic market , for this reason the reduction in domestic consumptions due to the pandemic, causes a drop in turnover, profits, and cash of business performance.

It is no coincidence that, the recent Italian Decree-Law 28 October 2020, no. 137, “Decreto Ristori”, approved by the Council of Ministers on 27 October 2020 to try to face the “second wave” of Covid-19 infections, provides a support for companies, as straight grants, rent tax credit and extension of redundancy fund in exception .

After the “Decreto Ristori”, there was the Decree-Law 9 November 2020, no. 149 “Decreto Ristori-bis”, that provides for additional urgent measures in favour of companies (such as enlargement of rent tax credit) , moreover there have already been some press reports of an imminent launch of two further Decree-Laws by the Government (“Decreti Ristori-ter e quater”), always supporting companies that face economic difficulties generated by the health emergency.

In the light of that “burst” of convulsive governmental decrees (certain already approved, other in progress) to support the economy, it is possible to question about the real mafia infiltration power in different sectors of “healthy” economy, that are strongly affected by emergency effects induced by Covid-19.

There is no doubt that mafia, thanks to the availability of liquidity obtained by unlawful means (just think of the drug market), can infiltrate in a wide range of economic sectors, as for example: building, procurements, renewable energy, transport, large scale commercial distribution, healthcare, public works, waste and counterfeit goods market.

Mafia infiltrations (like the control and conditioning) in the Economy, are aimed to pursue not only an economic enrichment, but also to use the possibility to forge relationships of mutual exchange of favours with the economic-entrepreneurial, political and public administration world, through business activities .

Therefore, the danger is that organized crime, in taking advantage of the current Covid-19 socio-economic emergency, can infiltrate into companies with financial difficulties, even if only occasionally or without control and condition them in a systematic manner, despite the State has today an advanced “arsenal” to prevent mafia infiltration mechanisms into the Economy.

The possible overlapping between disqualifying anti-mafia information and voluntary judicial control of companies

The Legislative Decree 6 September 2011 no. 159, known as “Codice antimafia”, contains today, as a result of the 2017 reform (Italian Law 17 October 2017, no. 161) , two sophisticated tools for the prevention of criminal infiltrations into companies: one of administrative nature, the disqualifying anti-mafia information (art. 84 co. 3 of the anti-mafia code) and the other of criminal nature, the voluntary judicial control (art. 34-bis, co. 6 of the anti-mafia code).

The disqualifying anti-mafia information is a preventive measure issued by the Prefect, to safeguard the economy and the good course of public administration from mafia infiltrations into companies, which come into contact with public administration, to ensure that choices of companies and public administrations are not influenced by the abovementioned infiltrations .

Unlike the anti-mafia communication, that consists in the simple attestation of the existence or otherwise of one of the grounds for revocation, suspension or prohibition, contained in Art. 67 of the anti-mafia code, the anti-mafia information is based on a discretionary assessment of the Prefectural authority, aimed to balance the safeguarding of order and public safety with the freedom of private economic initiative, in the face of symptomatic elements of mafia

infiltration danger. The effect of the disqualifying anti-mafia information is to interdict the beginning or continuation of the business activity with the public administration or the achievement of benefits, subsidies or grants and to revoke those already provided to the private entity.

How recently clarified with a decision of 2020 by the Council of State, the anti-mafia disqualification order produces effects in the sector of public contracts between public administration and companies, not also in the sector of private contracts: for this reason, the prefectural disqualification order is exclusive competence of the Prefect and cannot be requested by private entities .

The prefectural disqualification order determines for the player company in the public procurement market «a particular form of legal incapacity, partial and temporary, since it is limited to particular relationships, specified in the anti-mafia code and can break down as a result of successive provisions» .

The addressees of disqualifying anti-mafia information can ask the competent court for preventive measures the “voluntary” judicial control, after having appealed to the Regional administrative court the above-mentioned prefectural measure. For this reason, the voluntary judicial control is distinguished from the “ex-officio” one, with which shares the same assumptions (namely, the concrete danger of mafia infiltrations, which are suitable to affect business activities) and that is ordered by the competent judge for preventive measures, although the company is not addressee of a disqualifying anti-mafia information (art. 34, par. 1 of the anti-mafia code).

Therefore, the “voluntary” judicial control is the only patrimonial preventive measure other than the confiscation, that is applied to instance of company, by contrast with the “ex-officio” form of judicial control, and the judicial administration of goods related to economic activities and companies (art. 34 of the anti-mafia code).

The legislator of the reform tried in this way to reclaim companies that show an occasional mafia proximity, in order to prevent future mafia conditionings or intimidations that would make necessary the use of the worst preventive measure of the judicial administration, in the presence of assumptions typified in art. 34 of the anti-mafia code .

In other terms, the boundary between the voluntary judicial control and the judicial administration must be identified, as observed in doctrine, in the “thickness” of the mafia facilitation by the company: if the mafia facilitation is “less thick” and therefore only occasional, but characterized by the danger of criminal infiltrations, the competent judge for preventive measures can apply the judicial control, also upon party request; if, on the other hand, the mafia facilitation is “thicker” and therefore stable, because mafia conditioning is already in place, the judge can order the worst measure of the management dispossession of business assets for a limited period of time, to pursue the support and help programme of managed enterprises and the removal of factual and legal situations, which justified such a measure . Therefore, the voluntary judicial control is the lowest “rung” of a ladder that can lead to the more incisive patrimonial preventive measure of the judicial administration, until the preventive confiscation, pursuant to art. 24.

So while the anti-mafia information adopted by the prefectural authority ex officio and inaudita altera parte, is limited to interdict the company that is contiguous to criminal infiltrations from the economic relations with the public administration, the voluntary judicial control marks the arrival on the scene of the jurisdictional prevention that, at the request of the private party recipient of the judicial information, offers a «chance of productive continuity» to the company that «want to take shelter from criminal conditionings with

compliance and monitoring programmes, under the guidance of the judicial authority» . The voluntary judicial control is not linked to a «retrospective-stigmatising» model, proper of the traditional fight against mafia companies, but to a «prospective-cooperative» model, that aims to safeguard the production system with support measures for companies subject to prefectural disqualification orders, which want to free themselves from criminal infiltrations .

Once clarified the application field of administrative and jurisdictional prevention, it is appropriate to outline the terms of the problem, that will be elaborated further below, about the risk of a possible overlapping (unknowingly) introduced by the legislator in the matter of anti-mafia prevention for companies.

It refers to the fact that are not to exclude – as it will be verified later – interstices for a possible “interference” of the prevention judgement with the following administrative one.

It was already highlighted in doctrine that it is about a not completely rational situation, by those who have found that the adoption of the most effective measure for the enterprise is done by the Prefect, who is also investigative body, in the absence of mandatory cross-examination with parts , whereas the patrimonial preventive measure of the voluntary judicial control, with the aim to mitigate the rigour of the anti-mafia disqualification orders, is adopted with jurisdictional order by the competent judge for preventive measures in the in-camera judgement, in compliance with the adversarial principle.

Properly understood, the same risk of duplication of the prevention judgement with the successive administrative one, appears originate from the difficult dialogue between prefectures and courts in the field of anti-mafia prevention.

It can be established that the relevance of the problem, as already briefly said, seems to remain also after some jurisprudential pronouncements, that will be examined in the following paragraphs, from which it is possible to derive, albeit indirectly, some critical issues of the “double-regime” anti-mafia prevention system.

Persistent critical issues of the strange “overlapping”, also after the clarifications provided by the Constitutional Court judgment no. 57/2020

The judgment of the Constitutional Court no. 57/2020 is relevant for this topic, not so much for the question of constitutional legitimacy raised by a quo judge , but in particular for arguments put forward by judges of the Constitutional Court in support, so to say, of the anti-mafia prevention system articulated in anti-mafia disqualification orders and voluntary judicial control .

In briefly touching upon the question of constitutional illegitimacy, the court of Palermo in the light of articles 3 and 41 of the Italian Constitution, censored the article 89-bis, and subordinately, the article. 92, paragraphs 3 and 4 of the anti-mafia code, which extended the effects of the anti-mafia disqualification order to functional acts for the merely private entrepreneurial activity (in compliance with the article 67 of the anti-mafia code), in placing unreasonably the private entrepreneurial activity in the same situation in which a company is located, if it is subject of a preventive measure, applied with final decision.

In rejecting the question raised by a quo judge, the Constitutional Court highlights that the temporariness of the anti-mafia disqualification order, constitutes a «compensation» for the immediate effectiveness of the order and for the impossibility to exercise in administrative the powers provided in case of adoption of preventive measures of art. 67, par. 5 of anti-mafia code .

Although this point was not subject of specific censure by a quo judge, temporariness of the anti-mafia disqualification order appears to be not a very persuasive argument, if it is true, as evidenced in doctrine, that «it takes absolutely no account of the fact that, in most cases, if the company operates only in public contracting and procurement sector, despite the provisional nature, the provision could concretely result in an “occult life sentence”, that causes the disappearance of the company from the world of economic and legal relations» .

The prefectural disqualification order seems to be able to produce, in some ways, a boomerang effect, of which the Legislator does not appear to have been sufficiently aware, in consideration of the fact that this order has so incisive effects on the recipient company, to determine its disappearance from the market of public contracts, that is often the only outlet, especially for low-tech companies, that have no ability to “look” at other market sectors.

Next to the temporariness of the anti-mafia disqualification order, the Constitutional Court provides an additional argument to insist on its compatibility, namely the legal certainty and systematic precision. Indeed, the fact that it is based on more nuanced factual elements (because symptomatic and circumstantial) than those that are required in court, derives from the nature of the anti-mafia information. The reference of the Court is to factual elements typified by art. 84, par. 4 of the anti-mafia code (as the “spy offences”) from which the Prefect can infer the danger of mafia infiltration capable of influencing choices and addresses of the company with a technical-discretionary assessment. On the other hand, it cannot be hidden that the situation contemplated by art. 84, par. 4 let. e), that bases the prefectural assessment on verifications to be performed in another province by competent Prefects, on the request of the proceeding Prefect, it is too generic and therefore hardly susceptible to be in compliance with the principle of legal certainty of jurisprudential interpretation .

In the light of the (not) fully persuasive argumentations of the Constitutional Court “in support” of the overall mafia prevention system, it is now possible to dwell on possible solutions identified by doctrine to solve possible criticalities of the anti-mafia prevention system, in the twofold administrative and jurisdictional “guise”.

The valorisation of the prospective-cooperative model of the voluntary judicial control

In doctrine it was proposed to solve the aforementioned problem with the “enhancement” of the voluntary judicial control, that is based on a prospective-cooperative model, rather than a retrospective- stigmatising one.

In the relevant case law, a decision of the Court of S. Maria C.V. of 2018 is significant to understand better the new “conceptual paradigm”, to classify the voluntary judicial control.

As evidenced by the Campanian judge for preventive measures, the voluntary judicial control shows specializing profiles in relation to the “ex-officio” judicial control, because if on the one hand shares conditions (infiltration and occasional facilities), on the other hand it can be requested by the company receiving a prefectural disqualification order, previously challenged before the administrative court. A motivation that pushes the enterprise to ask the judicial control is the suspensive effect of the prefectural order, that is necessary for the company to self-clean, with the guarantees of the judicial proceeding (pursuant to art. 34-bis, par. 7 of the anti-mafia code). Furthermore, the Legislator intentionally did not specify the dimension of the applicant company, the judicial control procedure, or the area of public procurements in which the economic entity must operate.

This constitutes for the Court of Review an indication with which can be obtained the application of the aforementioned procedure to «economic entities that operates in the public

sector, understood in a broad sense, because the control delegated to the Prefect operates in the sectors of the awarding of public works and not within the relations between individuals and for this reason, if in the background of the judicial control of which to par. 6 there are companies operating in public sector, with regard to judicial control in general (adoptable also by the court ex officio, in compliance with par. 1 of the provision), it seems to be applicable to any economic entity, without further distinctions» .

The aforementioned decision does not particularly examine the conditions of the “voluntary” judicial control, based on the “occasional” nature of the mafia facilitation, as repeatedly mentioned.

In the absence of relevant pronouncements of the jurisprudence of the Supreme Court, trial Courts investigated the matter . The decisions of the courts of Reggio Calabria and Catanzaro focused the attention, respectively, on the importance of the public interest for the completion of public works, interrupted because of the prefectural disqualification order – that seems to be questionable for the discriminatory repercussions between companies and also to be outside the framework of art. 34-bis, par. 1 – and on the test of companies’ capacity to free themselves from a modest criminal conditioning, that would justify the self-cleaning of the entity through the compliance programme established by the court. There have been decisions like that of the court of Florence, according to which the “occasional” relationship between the company and the mafia crime has to be ascertained on the basis of the existence of a really operational business reality, for which it is possible and useful a judicial control in absence of impeding situations of any kind (for example: bankruptcy, insolvency proceedings, business directly or indirectly subject to seizure or other preventive measures, new parties’ requests, etc...) .

More recently, the court of Bologna, in the light of the “occasional” nature of the mafia facilitation/infiltration, that justifies the application of the “voluntary” judicial control, specified that it is directed to the so called “prescriptive supervision”, namely to a recovery after “reclamation” of proposed companies, that stands out from the so called tout court ablation measures, as seizure and confiscation»; a measure that, as evidenced by the “Commissione Fiandaca”, aims to «promote the mafia-depollution of economic activities, safeguarding at the same time the productive and managerial continuity of companies» .

After outlining the applicative condition of the voluntary judicial control in the relevant case law it is possible to analyse how, through the enhancement of the prospective-cooperative model of the voluntary judicial control, it is possible to try to solve some critical issues emerging from the application of the voluntary judicial control to companies addresses of anti-mafia disqualification orders.

In this respect, the starting point is the art. 34-bis, par. 3, let. e) of the anti-mafia code, according to which the Court for preventive measures, after nominating the delegated judge and the judicial administrator can impose to the latter – without prejudice to the obligation to implement the Organizational Model of Management and Control (M.O.G.) in compliance with art. 34-bis, par. 3, let. d – any other initiative to specifically prevent the risk of attempts of mafia infiltration or conditioning.

In the light of this “closure” provision with a wide scope, it is possible to wonder about the configurability of “overlapping” profiles between the prevention judgement, that concerns the reclamation of the company that want to self-clean and the (following) administrative judgement, that concerns the challenge of prefectural measure. It is about a preliminary question of the criminal trial, with regard to the administrative one.

An initial solution leads to the belief that it is only a “fictional” problem, in the sense that the prevention Court is not qualified to deliberate on justifying conditions of the application of anti-mafia disqualification orders, which are exclusive prerogative of the administrative Court.

From this point of view, the wording of art. 34-bis, par. 6, seems to leave no doubt on the fact, that the prevention judgement is other than the administrative one, about prefectural disqualification order. In other terms, does not fall within the competence of the prevention Court to question assumptions behind the prefectural disqualification order, but it can only know incidenter tantum the effects of aforementioned order, that cannot be modified or revoked (in compliance with art. 4, ann. E of the Italian Law no. 2248/1865).

However, in the case of the prefectural disqualification orders contravenes the law, it could still in general be assumed an eventual disapplication by the Court of prevention (in compliance with art. 5 L.A.C.). It could be objected to this observation, that the Court of prevention does not deal a real right of the company to self-clean from the danger of mafia infiltrations, that would “automatically” be followed by the beginning of judgement of prevention, but a faculty that is evaluated by the judge in the light of the repeatedly cited conditions, typified in art. 34-bis of the anti-mafia code. Moreover, also wanting to admit a problematic application of the aforementioned dispositions of the L.A.C. an eventual revaluation of conditions of disqualification orders adopted by the Prefect would lead to a duplication of administrative judgement, not coherent with the “double regime” system of the patrimonial prevention, as outlined by the anti-mafia code.

Instead, a second solution suggest that the problem is “real”, that is to say that could configure interferences of the prevention judgement with the successive administrative one. As far as the judgement of prevention is a “prius”, directed to the rehabilitation of the company, whereas the administrative judgement is a “posterius” regarding the legitimacy of the prefectural disqualification order, it is not possible to draw a rigid boundary line that rigidly separates the criminal court matter from the regional administrative court one.

It would be inevitable, in this speculative perspective, that the Court of prevention would constitute, in some ways, a “duplication” of the administrative judgement in so far as it implicitly examines, even if incidenter tantum, the legitimacy of the prefectural measure.

Moreover, the court of prevention could well disapply the unlawful prefectural order, not being particularly persuasive the formal data of the faculty – rather than the right – of the company to rehabilitate from the danger of criminal infiltrations even if only occasional. In accepting the formal qualification as a “faculty” and not as a “right” of the company to the self-cleaning, it would be the risk to underestimating that, with the granting of private application, in addition to the launch of the compliance programme, the effects of prefectural disqualification order (that determines the factual disappearance of the company from the world of public procurements) are suspended.

From this speculative perspective, the Court of prevention can examine incidenter tantum the lawfulness of these “cascade” anti-mafia information, namely exclusively founded on the relevance of the existence of stable associative relationships between the company subjected to the impediment information and the one affected by a previous disqualification order, when from the relationships between the two companies it is possible to identify the existence of a criminal association between the two operators. In this regard, administrative case-law clarified that, if the exam of contacts between companies reveals the episodic, inconsistent, or remote character of the business relations, it must be excluded the automatic transfer of the anti-mafia side effects from the first company to the second one .

If the court of prevention declares the illegitimacy of a “cascade-applied” disqualification order, considering as episodic the contact between the company A, already burdened by a disqualifying measure and the company B. In this case it would be configurable, in general, a possible “interference” between the prevention judgement and the administrative one, in so far as the first “duplicate” the second, in some ways. The court of prevention would declare incidenter tantum the illegitimacy of a disqualification measure ordered against the company B, derived by the prefectural authority “in a circular fashion” from the company A, in the absence of a necessary concrete assessment of factual elements. Hence, the judgement of prevention can constitute, in some ways, also the tool with which companies achieve the assessment, albeit with incidenter tantum effectiveness, of the absence of supporting assumptions of the “cascade-applied” judgement anti-mafia measure, in the absence of a set of evidence, that is symptomatic of an “occasional” contiguity with the mafia crime . In the absence of the legitimacy of the prefectural disqualifying measure, it would be lacking the ubi consistam for the process of voluntary judicial control, but above all it would be the perception of a difficult “dialogue” in the anti-mafia world, between the administrative prevention and the jurisdictional one, as far as these are two pillars that in the anti-mafia code should be communicating, if we consider that the obligation for the Prefects to communicate to the prosecutors their disqualification orders, for the application of capital measures other than confiscation, such as judicial administration or supervision (Art. 91, par. 7-bis of the anti-mafia code) . In this way the mentioned obligation to communicate, incumbent on the prefectural authority allows prosecutors to set a strategy to contrast mafia infiltrations, inspired by the flexibility provided for in the anti-mafia code, between judicial administration or control, in the light of proportionality (the aforementioned metaphor of the “rungs” of the ladder) and lower invasiveness for the freedom of enterprise, given that the dispossession of business assets constitutes, as mentioned, the extrema ratio, where a prospect of reclamation under the (also voluntary) therapeutic-judicial programme is not possible.

The perception of difficult “dialogue” between administrative and jurisdictional prevention, that is also at the basis of the aforementioned “duplication” risks between the judgement of prevention and the successive one before the Regional administrative court, seems to be confirmed by the fact that the disqualifying prefectural order shows to be unbalanced on the level of protection of public policy, to the disadvantage of the freedom of enterprise, proof of this lies in the fact that, the prefectural order is normally issued inaudita altera parte and on the base of an evidential plafond based on the “more likely than not” prognostic judgement; with the result that it necessarily would be up to the jurisdictional prevention a more in-depth evidential analysis, that might indicate clues about the concrete danger of mafia infiltrations, which are suitable to condition business activity . The concerns mentioned in doctrine about certain aspects of unconstitutionality of the anti-mafia disqualification order , in the light of its applicative extension as a result of the recent changes of the anti-mafia code were not accepted, as previously mentioned, by the Constitutional Court’s decision of 2020.

In the most recent jurisprudence of the Supreme Court, the ratio of the judicial control asked by the company was further clarified, in the light of the system of appeals against patrimonial preventive measures. This point will be focused in the following paragraph.

Further details of the voluntary control ratio in the most recent jurisprudence of the Supreme Court

The Supreme Criminal Court offered to interpreters some clarifications about the nature of the voluntary judicial control, which although are properly about the procedural area, seem to be of interest also in the full examination of relations between anti-mafia disqualification order and “voluntary” judicial control.

A first important interpretation of the ratio of the abovementioned legal institution was developed by the Joint Sections in 2019, which claimed that the appeal to the Court of Appeal extends also to the decision of rejecting of the motion of application of the “voluntary” judicial control . Besides procedural profiles, that goes beyond this examination, it is interesting to highlight the reminder of the Supreme Court to purposes of voluntary judicial control, which does not aim to «the severance of the relation with the owner, but to the recovery of business reality to the freedom of competition, after an amending process» . The Supreme Court emphasise one point already grasped by the doctrine and the abovementioned relevant case law , namely that voluntary judicial control is framed in a prospective-cooperative model, rather than in a retrospective-stigmatising one. The amending process is based, as rightly noted by the Supreme Court: «on concrete possibilities that the single company has to fruitfully “walk the path” to a re-alignment with the healthy economic context, also making use of controls and solicitations (in the case of administration, also real interferences) that the delegated judge can use in leading the infiltrated company».

A second decision of the Supreme Court, more recently , clarifies on the procedural plan that the Prefecture is devoid of legitimacy to appeal the decision of the Court of prevention that applies the voluntary judicial control in favour of a company through which the Prefecture with territorial jurisdiction itself adopted an anti-mafia disqualification order. The lack of legitimacy, as written in the maxim, is the fact that «the public part of the prevention process, holder of the power to introduce the notice of appeal through a decision that terminates the process, is identified by the Legislator in the Public Prosecutor of the Republic and the Public Prosecutor of the Court of Appeal, to the exclusion of other public entities. No different solutions can be reached, in relation to the fact that the Prefecture was involved in the preliminary discussion of the request of the company addressee of disqualifying information». Leaving aside the procedural profiles, the abovementioned decisum of the Supreme Court was read in a broader framework by criminal law scholars, who identified some points to hope, through a «wider valorisation» of the voluntary judicial control, the opportunity of a «constructive dialogue» between Prefectures and Courts of prevention.

The importance of a “cooperative” relationship, rather than a “competitive” one, between Prefectures and Courts of prevention is of fundamental importance, also to “put together” possible duplications of the judgement of application of the patrimonial preventive measure and the abovementioned administrative judgement.

Conclusion

In the age of Covid-19 epidemiological socio-economic emergency, the danger of mafia infiltrations in a portion of “healthy” economy is a concrete risk, of which little is said about by the media. It is useful to remember that in the German public debate about the possibility of issuing Coronabonds to face pandemic, an article in the Die Welt was called: “Frau Merkel, bleiben Sie standhaft!” (“Mrs Merkel stay unwavering”) . The author of the editorial, Christoph Schiltz, invited the German Chancellor Merkel to oppose the emission of common debt securities in favour of Countries as Italy, «where mafia is strong and now is waiting the

new indiscriminate financings from Bruxelles – funds must be collected only for the health system and not only for the social and fiscal ones». And «obviously Italian have to be controlled by Bruxelles and use funds in accordance with the rules» .

Beyond the aforementioned press article, that is probably also affected by ancient prejudices against Italy, the fact remains that our Country, as noted above, has “advanced” tools to combat the danger of mafia infiltrations, which lacks in other European countries (among which also Germany). In the actual socio-economic crisis, “triggered” by the pandemic, the Italian anti-mafia prevention system, can work in “double regime” if, as it has been correctly observed, the two pillars of anti-mafia prevention, Prefectures and Courts, will not constitute «worlds not communicating with each other» .

This condition appears essential also to avoid possible “overlapping” between the judgement of prevention on the requests of “voluntary” judicial control and the successive administrative judgement against the legitimacy of the prefectural disqualification order.

Finally, a brief commentary, that goes beyond the strictly penal context. The only Italian “double regime” anti-mafia prevention, although is advanced at European level, would run the risk of being insufficient in the absence of a Public Administration up to other juridical experiences (as for example, Germany, Switzerland, and France) where, not by chance, are recorded the highest levels of expenditure of European structural and investment funds .

It is evident that in Countries as Italy, where the level of expenditure of these funds is lower (also because of a situation of high fragmentation and inhomogeneity of public administrations’ information systems) , it could be created further conditions for mafia infiltrations in the economy. An inefficient public administration risks, in general, to increase the infiltration risk of (“old” and “new”) mafia in the Economy, until reaching the pervasive conditioning of economic development.

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