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NOTE

from : Drugs and Organised Crime working group

to : K.4 Committee

No. prev. doc. : 6050/97 ENFOPOL 33

Subject : **EU-wide computerised system on money laundering**

1. An expert meeting on money laundering was organised on 24/25 February 1997 in Brussels. This meeting was a follow-up to the seminar held during the Irish Presidency on 13/14 November 1996 in Dublin. The meeting focused on the interim report of the Netherlands Presidency that is a first stage on the possibility of arriving at an EU-wide computerised system containing money laundering related transaction information for investigation purposes (cf. doc. 6050/97 ENFOPOL 33). The experts agreed on a text that is annexed to doc. 6277/97 EUROPOL 39.
2. At its meeting of 5 March 1997 the group Drugs and Organised Crime, subject to linguistic verifications, amended aforementioned text and agreed on the version that is annexed to this note, it being emphasized that
 - the exchange of information should at this moment be restricted to the information available to and used by law enforcement officers.
 - a further study (definition study) on how to realise the abovementioned EU-wide computerised system should be undertaken.

3. The Presidency **proposed that a proposal be made in cooperation with the U.K. and the Commission to finance a study in the framework of the OISIN program.**

The study could be guided by a small group of experts from Member States (France, Finland, NL, Luxembourg, Italy, U.K.) as well as EDU and the Commission.

The study should take due account of legal (including data protection) law enforcement and technical aspects.

4. Some delegations underlined the importance of studying the data exchange between national authorities **responsible for receiving suspicious and unusual transaction reports (where these are not yet available for further law-enforcement purposes)** as well as the practical problems these authorities encounter herein. **The study could consider whether** the adoption of a legal instrument governed by provisions of Titel VI of the TEU, on which a European-wide data exchange between aforementioned authorities will be based, is a way to overcome the various obstacles in the preliminary stage of information exchange on money laundering. These delegations expressed their willingness to pursue as a parallel exercise to the study under 2 the feasibility study with a special focus on data referred to in the present paragraph.
5. The study under 4 should take into consideration the work done in the Egmont group. It was stressed that this study should not interfere with the study sub 2.
6. The K.4 Committee is invited to endorse the conclusions under 2., 3. and 5. and the annex in view of its transmission to the Council.

1. INTRODUCTION

The importance of combatting money laundering has been stressed by both the Justice and Home Affairs Council as well as the European Council. The European Parliament in reviewing the report of the European Commission on Directive 91/308 expressed views on the importance of further actions in combatting money laundering. Following this the Drugs and Organised Crime Working Group endorsed to develop further steps on cooperation in this area.

Money laundering is a crime that often extends across the borders of national states. Therefore, combatting money laundering demands intensive international cooperation. International agreements, including the Convention of Vienna (1988), have been made to realise this cooperation. This treaty made the laundering of profits from illegal trade in narcotics and psychotropic substances a criminal offence. In order to combat money laundering derived from other criminal practices, the Council of Europe extended the scope of legislation in the Convention of Strasbourg (8 November 1990) making the laundering of money from all forms of crime a punishable offence. In view of the importance of the international exchange of information on combatting money laundering, the treaty has created the opportunity to exchange information spontaneously when this is important in investigations.

To continue this, the Council of the European Communities adopted the Directive 91/308 on 10 June 1991 which serves to prevent the financial system within Europe from being used to launder money. Money laundering is defined as:

"the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such an activity, for the purpose of concealing or disguising the illicit origin of the property, or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action."

The objective of this Directive is (a) to protect the financial system from money laundering activities in order to maintain public confidence in this system and (b) to allow the financial system to contribute to the prevention of money laundering.

In order to promote cooperation between the members of the European Union, the Italian presidency made initial proposals (doc. Enfopol 105).

The Irish presidency organised a seminar in Dublin on 13 & 14 November 1996 on practical methods of combatting money laundering. During this seminar, an in-depth debate took place on the contribution that a structured exchange of information on suspected money laundering transactions could make to the prevention of money laundering. This debate resulted in the unanimous want for a feasibility study into the possibilities and difficulties of arriving at a structured exchange of information between the European Union countries on suspicious transactions containing facts which point toward money laundering and to submit recommendations based on the problems identified therein.

2. SCOPE

Within the Member States the following types of offices engaging in gathering information on combatting money laundering exist:

- Administrative reporting centres with a buffer function;
- Police reporting centres with a buffer function;
- Police reporting centres without a buffer function;
- Judicial reporting centres;
- A combination of police/judicial and administrative reporting centres.

Furthermore some Member States make a distinction between unusual and suspicious transactions.

A third distinction is made between information available only to law enforcement officers and information also available to other offices, like centres with a buffer function.

In the preparatory works, the Netherlands Presidency endeavoured to establish which distinction would be most appropriate.

3. NECESSITY

The need to develop an EU-wide system to exchange information regarding money laundering transactions, in criminal cases, follows from the need to combat money laundering effectively and efficiently. Money laundering is a widely known form of cross-border crime, therefore effective international cooperation, using modern communication, is necessary for effective law enforcement.

Existing operational cooperation indicates that a structured and systematic exchange of information is necessary. The system would not only facilitate the detection of links between transactions (and the suspects) in the various Member States of the EU much more quickly than is now possible, but it would also enable the detection of links that would have otherwise stayed undetected.

To effectively combat criminal money laundering, information needs to be quickly available and providing access to further complete information. This is necessary to make the most efficient and effective use of limited manpower.

4. OBJECTIVE OF THE PREPARATORY WORK

Following the above mentioned preparatory work the Netherlands presidency undertook to develop further proposals. In order to develop these a feasibility study was made into various possible alternatives.

The objective of this study was to gain insight into the possibility of arriving at a better exchange of laundering-related information between the European Union countries in order to realise a more effective and efficient manner of investigation, prosecution and proving money laundering. A number of premises concerning the exchange of information have been drawn up:

1. the information to be exchanged should refer to subjects; and
2. the information to be exchanged refers to criminal flows of money; and
3. the information to be exchanged can be coupled to the other available investigation information.

The study is intended to acquire insight into the nature of and means by which this data is obtained, processed and exchanged within the European Union so that the possibility of realising the structured exchange of laundering-related information can be assessed. This information is used to create an overview of the similarities and differences which apply within the European Union regarding to the management of laundering-related information. Subsequently, the study is intended to indicate the possibilities of arriving at the structured exchange of this information between the European Union countries, based on the current situation with regard to obtaining, processing and exchanging laundering-related information. In addition to the potential of current information management, the study is also intended to indicate several options which, although not possible currently, could in time be considered in combatting money laundering at European level.

5. RESULTS OF THE EXPERT MEETING AND RECOMMENDATIONS

The study has been discussed in depth in the Expert meeting on money laundering within the remit of the Drugs & Organized Crime Working group on february 24 and 25, 1997. The Expert meeting concluded that further study should be limited to transaction information on money laundering available to law enforcement officers.

On the basis of these discussions the expert group forwards the following recommendations to the Working Group Drugs and Organised Crime.

General Conclusion

On the basis of the data generated by this study, and taking into account the recommendations, it appears that an EU-wide computerized data exchange system containing laundering-related transaction information for investigation purposes is feasible. The exchange of information must at this moment be restricted to transaction information available to and used by law enforcement officers.

The system should **take into account possibilities offered by Europol and respect** the legal possibilities of the EU Member States.

Recommendations

1. It is recommended that a **further study be made on the feasibility and the definition of an EU-wide computerised data exchange system (Money Laundering Data System)**. This system should enable and facilitate the investigation into money laundering criminal actions, whereby subject-orientated information is exchanged by means of a reference index. This feasibility and definition study will entail an inventory of the functions of the computerised system, the possible links to other relevant (national and international) computerised systems and the possible alternative functions, with a preference for the infrastructure developed for Europol.

The study should give due consideration to:

- the desired (basic) contents of the reference index involving criminal money flows of subjects, which can then be matched to available information relevant for law enforcement officers.
- the measures needed for the technical aspects of connection, ensuring that national databases could communicate with any EU-wide computerised system.
- **the need for such a system and the cost/benefit aspects.**

The result of the **feasibility and definition** study will be the basic framework for the next phase, particularly for the Basic Design of the computerised system.

2. It is recommended that **the study** envisages the need for an adequate legal regime, including the way in which data protection can be guaranteed. In this context, it is also recommended to examine the extent to which the Europol Convention already offers an adequate framework.

3. It is recommended that **the study** also takes into account the possibilities for regular evaluation - **in case of agreement - of any proposed** EU-wide computerised data exchange system with a view to its improvement or to amending its functions.