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LIMITE

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NOTE

from : the UK delegation

to : the Drugs and Organised Crime working group

Subject : Draft Joint Action concerning arrangements for the better exchange of information in respect of payment card crime between Member States' Law Enforcement Agencies and the payment card industry, where such information is required for the investigation of offences

1. The Drugs and Organised Crime Working Group is invited to consider and adopt the attached draft joint action which is designed to promote and facilitate the exchange of information concerning payment card crime. It takes account of comments made during the experts meeting on Credit Card Crime held on 8 November, which was organised under the auspices of the Drugs and Organised Crime Working Group.
2. The initiative has its origins in an Anglo/Dutch conference on "Co-operation to combat Organised Payment Card Crime affecting the European Union" which was held in London in November 1996. One of the conference's recommendations called on member states to "identify a law enforcement agency to become a central point of reference". The draft joint action invites member states to designate a national contact point to facilitate the exchange of information concerning payment card crime, both between national law enforcement agencies, and between those agencies and the payment card industry.

3. The profits available to organised payment card fraudsters are considerable. A few figures give an idea of the scale. Total payment card losses in the United Kingdom in 1996 amounted to £87.1 million (approximately ECU 70 million). This represented a rise over the previous year, and followed three successive years in which total losses had fallen. The total losses in 1996 on cards issued in the EU by VISA International equalled US\$ 224 million (approximately ECU 196 million). This last figure does not include losses in the EU from VISA International cards issued outside the Union, which accounted for a further US\$ 239 million (approximately ECU 206 million).
4. It could be argued that losses resulting from payment card crime are a commercial matter which must be addressed by the payment card industry, rather than a priority for law enforcement agencies. It would be wrong to adopt this view. The level of potential profits indicate that payment card crime is very attractive to organised criminal groups, and profits are commonly used to support other forms of organised criminal activity. By way of example, plastic card counterfeiters are typically also involved in counterfeiting other items such as currency and identity documents. Counterfeit identity documents provide a clear link to illegal immigration racketeering or trafficking in human beings.
5. In addition to the size of potential profits, payment card crime is attractive to organised criminals because the starting costs are low and the global recognition of credit cards and technological advances provide a wide range of possibilities for low-risk fraudulent use. This is underlined by a recent case in the United Kingdom where the details of cards being used in the Far East were immediately passed by computer link to the UK, where a counterfeit card was ready for use within minutes of the original card being compromised.
6. The nature of the problem posed by organised payment card crime requires a concerted and co-ordinated response. The High Level Group's Action Plan recognises the importance of denying organised criminals financial gain, and this draft joint action attempts to achieve that end by ensuring that the exchange of information can take place between all of the relevant parties. The draft joint action should also be seen as complementary to other activity in this area, such as the Interpol work on a universal classification system and central reference library for counterfeit payment cards.

DRAFT JOINT ACTION

of.....

adopted by the Council on the basis of Article K9 of the Treaty on European Union concerning arrangements for the better exchange of information in respect of payment card crime between Member States' law enforcement agencies, and between those agencies and the payment card industry, where such information is required for the investigation of offences

THE COUNCIL OF THE EUROPEAN UNION

HAVING REGARD to Article K.3(2)(b) and K.1(8) of the Treaty on European Union,

HAVING REGARD to the initiative of the United Kingdom, of the urgent problems arising from international crime

MINDFUL of the common objective of improving co-operation between law enforcement agencies,

CONSIDERING that payment card crime is involved in the furtherance of international crime,

CONVINCED that there is a need, for the purposes of investigating, detecting and preventing criminal offences, for the law enforcement agencies of Member States to secure and exchange information with one another and with the payment card industry concerning the use of payment cards in the furtherance of crime,

ON THE UNDERSTANDING that the forms of co-operation laid down in this Joint Action should not affect other forms of bilateral or multilateral co-operation,

HAVE AGREED AS FOLLOWS:

ARTICLE 1 : INTERPRETATION

1.1 In this Joint Action:

- (a) Card payment system means a system by which a plastic or other card may be used to accomplish the transfer of funds between two parties;
- (b) issuer means a member of a card payment system that issues cards;
- (c) Account number means a unique sequence of numbers identifying issuer, card type and card holder.

ARTICLE 2 : ESTABLISHMENT OF CONTACT POINTS IN MEMBER STATES

2.1 Each Member State shall, subject to national constitutional requirements, designate or establish a national contact point to forward and receive requests for information on the use or suspected use of payment cards in the furtherance of crime. Where possible, this contact point should be located with the central national contact point designated in accordance with recommendation 18 of the High Level Group's Action Plan to combat organised crime⁽¹⁾,

2.2 The National contact points so designated shall be points through which liaison:

- (a) between Member States' national law enforcement agencies, and
- (b) between those agencies and the payment card industry

may be facilitated and information sought and supplied in accordance with national law.

⁽¹⁾ 7421/97 JAI 14 - Action Plan to combat organised crime, Brussels 21 April 1997

2.3 Relationships between the national contact points so established and

- (a) national law enforcement agencies, judicial and other relevant authorities (hereinafter referred to as "the relevant authorities"), as well as,
- (b) representatives of the payment card industry

shall be governed by the national law, including the relevant national constitutional requirements.

ARTICLE 3 : NATURE OF INFORMATION TO BE EXCHANGED

3.1 Where necessary for the prevention, detection and investigation of offences, the law enforcement agencies and other relevant authorities of Member States may, through national contact points acting in accordance with national law, seek from and exchange with, such agencies and authorities in another Member State of States information on payment cards which are being used, which have been used, or are to be used or which are reasonably suspected of being used in the furtherance of crime, or are of such an unusual nature that they might be used in the furtherance of crime.

3.2 Information which may be sought and exchanged in respect of payment card crime under article 2.1 above may include:

- (a) information to establish the identity of the account issuer
- (b) information to establish the identity of the card or account holder of any such payment cards (hereinafter referred to as "the subject")
- (c) in the case of payment card crime accurate details of fraudulent transactions known to the issuer of the payment card(s) being used;
- (d) details of the account number being used by the subject
- (e) technical information on the payment card system.

- 3.3 The requested Member State and its relevant authorities shall have the final decision on the nature and extent of information supplied on the basis of this Joint Action.
- 3.4 The conditions under which such information is to be supplied shall be determined by the requested Member State and its relevant authorities in accordance with its national law. The requested Member States shall inform the applicant Member State of those conditions.

ARTICLE 4 : CONFIDENTIALITY

- 4.1 Member States shall take appropriate measures to protect information which is obtained on the basis of this Joint Action.
- 4.2 Member States and their relevant authorities shall discuss and agree upon measures necessary to secure the confidentiality of any information exchanged on the basis of the Joint Action.
- 4.3 In particular, Member States and their relevant authorities shall advise one another as to the requirements of their national law regarding the disclosure of information in the course of judicial and administrative proceedings and discuss in advance any potential difficulties arising from these requirements.

ARTICLE 5 : PRIVACY AND HUMAN RIGHTS ISSUES

- 5.1 In the supply and exchange of information under this Joint Action Member States shall take account of:
- (a) the principles of the Convention for the Protection of Human Rights and Fundamental Freedoms and protocols to the said Convention, and

(b) the Council of Europe Convention of 26 January 1981 and the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995, and in so doing, shall take account of Recommendation No R (87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987 concerning the use of personal data in the police sector.

ARTICLE 6 : ENTRY INTO FORCE OF THE JOINT ACTION

6.1 This joint action shall be published in the Official Journal. It shall enter into force on the date of its publication.

Done.....
