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STEPPING UP THE FIGHT AGAINST
ORGANIZED CRIME

I. State of play

The fight against organized crime is amongst the matters of common interest listed in Article K.1 of the TEU

in particular in the wording of Article K.1(9) (police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime (...) in connection with a system for exchanging information within Europol.

secondarily in points 5 and 7 of Article K.1 (combating fraud on an international scale and judicial cooperation in criminal matters).

On the basis of these texts, the fight against organized crime is being fought on several fronts.

(1) EUROPOL

(a) creation of the EDU, which is currently responsible for drugs, illegal trafficking in radioactive and nuclear substances, illegal vehicle trafficking and trafficking in labour, to which will shortly be added trafficking in human beings and associated money laundering.

(b) signing of the Europol Convention, implying extension to other forms of organized crime and terrorism.

(2) Police cooperation

Certain one-off activities should be highlighted:

- Resolution on the interception of telecommunications;
- conclusions on car crime;
- conclusions on organized international crime;
- report on measures against organized crime;
- annual situation reports on organized crime in the European Union.

(3) Judicial cooperation

The major legal instruments (not yet ratified) on the protection of financial interests, on simplified extradition procedures, and on extradition are all designed to combat organized crime. The same is true of the current discussions on mutual assistance in criminal matters, the Action Programme of the Member States of the European Union and the CCEEs on judicial cooperation in the fight against international organized crime and the Resolution on the protection of witnesses in the fight against international organized crime.

II. What can be improved

1. EUROPOL

In its current form, Europol operates police cooperation in the form of an intelligence service, but is not an operational force working on the ground.

Article K.1(9) seems to rule this out as it refers to a "system for exchanging information".

However, Europol was originally intended (European Council in Luxembourg in June 1991) to be much more than a "relay station for exchange of information and experience", since the document tabled by the German delegation continued "in the second phase powers to act also within the Member States would be granted".

Proposals:

- 1° The sophistication of the methods used by criminal organizations and the transnational nature of their activities lead us to propose that **operational task forces** be set up within EDU/EUROPOL; their remit would be to conduct investigations, in coordination with Member States' police forces, covering the whole territory of the Member States in certain cases which are particularly serious (large-scale financial crime, drug trafficking, money-laundering) or technically complex (cybercrime).

- 2° Despite the undertakings given by the Ministers for Justice and Home Affairs, at their informal meeting in Dublin on 26 and 27 September 1996, to see that the **Europol Convention** is ratified by the end of 1997, it could be decided **to bring forward entry into force of the Convention** as from the eighth ratification. The European Central Bank might be taken as a precedent: representatives from all the Member States will have seats on the Governing Council of the Bank, with different powers, as from the start of phase III of EMU.

2. Police cooperation

2.1. The studies carried out by EDU/Europol show that the fight against sophisticated forms of organized crime requires modern working methods (see operational practices and techniques relating to drug matters in the EU) and these should include:

- controlled deliveries
- rules for searches of premises
- use of informers and undercover agents
- observation techniques (video, camera)
- phone-tapping
- fictitious purchases
- protection of witnesses
- financial investigations
- the right of hot pursuit, etc.

A comparative study of legislations and practices suggests possible ways of improving the rules and, by extension, police cooperation.

2.2. Establishment of a **mechanism** to ensure that action plans decided on by the Council of the European Union are properly implemented in operational terms at national level.

This idea involves backing up the Union's programmes (e.g. combating trade in human beings, combating corruption, combating synthetic drugs, etc.) with an undertaking by (certain/all) Member States to mobilize the national funds and police forces needed to implement them and ensure that they operate in a coordinated manner.

3. Judicial cooperation ⁽¹⁾

There are three reasons for proposing that judicial cooperation in criminal matters be brought into line with the situation regarding police cooperation swiftly and in accordance with a strict timetable:

1. Legality: since the new methods of investigation (controlled cross-border deliveries, cross-border surveillance, covert investigations, hot pursuit, etc.) involve infringement of individual liberties, they must be given a legal framework. This has been done to differing degrees in national legislations, but nothing has been undertaken at international level. Moreover, in most Member States, criminal investigation activities are supervised by judges. A number of steps which are indispensable in finding out the truth must either be authorized in advance or be subject to prior or subsequent judicial control: searches of premises, phone-tapping, controlled deliveries, use of undercover agents, lifting of banking secrecy, etc.

It would hardly be democratic if European police forces were able to disregard these requirements in cases going beyond national borders.

2. Efficiency: owing to the need in most Member States for a judge (examining magistrate, public prosecutor) to be involved from the start in the conduct of complex investigations simultaneously performed in a number of countries, flexible and swift cooperation mechanisms should be established as an extension of police activities.

⁽¹⁾ When the proposals made in this section are given practical form, account will have to be taken of the specific nature of the judicial structures in common-law States.

3. Profile: there is no "club" where judges from the Member States responsible for matters of organized crime can talk and share experiences.

This need is illustrated by the appeal made in Geneva by seven European judges on 1 October (see Denis Robert, "La Justice ou le chaos, Ed. Stock, 1996) and their plan to hold a European Conclave in 1997.

Proposals:

1. Set up, by means of a joint action, a **European Judicial Unit to combat organized crime** composed of public prosecutors and investigating magistrates or their equivalents in countries where this institution does not exist. The Unit would work in close cooperation with the EDU.
2. Before the end of the Netherlands Presidency, finalize the draft Convention on **Mutual Assistance in Criminal Matters** between the Member States of the European Union and widen its content. It should include a statement of certain basic principles of the European judicial area (protection of victims' interests (B), legal certainty (NL), mutual confidence, etc.) and a legal basis should be provided for the new cross-border methods of investigation.

To help bring about the conclusion of the Convention, it would be very useful if some basic rules for this reinforced judicial cooperation could be included in the TEU:

- possibility for judges from different Member States to establish direct contacts among themselves;

- quasi-national treatment of mutual assistance;
- prosecution throughout the territory of the Union of offences committed within that territory;
- transfer of proceedings to the relevant authorities of the Member State where the proceedings may be conducted effectively or are the most appropriate;
- introduction of a network of reference authorities (national or contact judges) within each Member State.

3. Periodically hold **joint meetings** of the national experts on the **Police Cooperation and Judicial Cooperation Working Parties**.

4. International cooperation

International organized crime is – by definition – international and goes far beyond the borders of the EU (e.g. the CCEE, Russia, China, etc.).

Hence the need:

- for international cooperation extended to these countries
- to create operational instruments with these countries.

Given its political dimension and the diversity of the legal and political instruments at its disposal, **the EU should be the prime forum for the definition and conduct of external relations** in the fight against organized crime.

There is a possibility that the effectiveness of its action will be weakened by the proliferation of regional initiatives (Budapest Group, Visby Group, Schengen) or even world initiatives (G7/P8, GAFI).

5. Functioning of Union bodies

- Increase the frequency of JHA Council meetings.

- Establish K.4 in Brussels.

- Increase the human resources of both the Commission and the General Secretariat of the Council (set up a unit comprising six or seven national experts on secondment for a limited period).