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NOTE

from : the Europol Working Group (meeting 28/29 July 1997)

to : the K4 Committee

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Subject : Trafficking in human beings

Pursuant to conclusions of the meeting of the K4 Committee on 25/26 June 1997, the Europol Group reexamined the definition of "traffic in human beings" (cf. point 2.5). 14 delegations agreed on the new text that is on page 5 ; the Belgian delegation made a reservation.

1. Introduction

The European Union Ministers of Justice and Home Affairs have committed themselves to combat the abuse of children and the related traffic of young people and pornographic materials. During their informal Council meeting in Dublin on 26 and 27 September 1996, they agreed to extend the mandate of EDU to encompass the trade in human beings. This agreement resulted in the Joint Action of 16 December 1996 extending the mandate given to the EDU. When Europol starts its activities, Article 2 para. (2) of the Convention provides for Europol to deal with the trade in human beings.

A meeting of operational experts was held at the EDU in The Hague on the 14 October 1996. Contributions from the participants revealed that a number of Member States are faced with new forms of trade in human beings. These include crimes involving missing children, adoption related offenses, trafficking of women, child abuse networks, child escort agencies and others. While most of the known cases are perceived to be domestic, some of these lead on to commercial international criminal activity. In any case the true scale of the problem is not yet known and an early priority will be to arrive at a reliable European Union perspective on this phenomenon. During this meeting it was agreed that a Project Team consisting of volunteering Member States¹ and representatives of the EDU and the Commission should meet soon after the mandate extension came into force, to examine the field of criminality and to make recommendations.

The Project Team and EDU have reported to the Europol Working Party and has focused on areas of work they recommend the EDU should concentrate on outside the EDU core business (exchange of information and operational support). Taking the recommendations of the Project Team into account, the Europol Working Party advises the following.

¹ Belgium, France, Germany, The Netherlands

2. Legal framework

2.1 Definition of "traffic in human beings" in the Convention

Analysing the legal framework in which the EDU and, in the near future, Europol have to operate against the abuse of children and the related traffic in young people and pornographic materials, it appears that the definition of "traffic in human beings" in the annex to Article 2 of the Convention is not sufficient in order to fulfil completely the commitment of the Ministers. The traffic in pornographic materials in which images of children appear, cannot effectively be dealt with by Europol under the present text of the Convention and its annex.

In the annex to Article 2, the Europol Convention defines "traffic in human beings" as follows (the French text, being the "authentic" text):

" Traite des êtres humains, le fait de soumettre une personne au pouvoir réel et illégal d'autres personnes en usant de violences ou de menaces ou en abusant d'un rapport d'autorité ou de manoeuvres en vue notamment de se livrer à l'exploitation de la prostitution d'autrui, à des formes d'exploitation et de violences sexuelles à l'égard des mineurs ou au commerce lié à l'abandon d'enfant."

The mandate of the EDU is based on the same definition of "traffic in human beings". Article 1 para. (3) of the Joint Action of 16 December 1996 extending the mandate of the EDU refers explicitly to the definition mentioned in the Convention. Article 1 of the Joint Action provides:

- "2. The Unit shall act as a non-operational team for the exchange and analysis of information and intelligence, as soon as they affect two or more Member States in relation to:
 - (a) - (c) (...)
 - (d) traffic in human beings;
 - (e) (...)together with the criminal organisations involved and associated money laundering activities.
3. For the purposes of this Joint Action, traffic in human beings is as defined in the Europol Convention."

2.2 Interpretation of the definition of "traffic in human beings"

The first part of the definition of "traffic in human beings" mentioned in the Convention stipulating "traffic in human beings means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue" is an internationally recognised definition of traffic in human beings. The Convention text deliberately does not limit Europol's competence exclusively to trade in persons with a view to the exploitation of prostitution only. The definition gives Europol a broad mandate, enabling Europol to act against different forms of trade in human beings, whether this trade is with a view to the exploitation of prostitution, sexual exploitation of minors or other forms of forced subjection of persons. The abstract formula in the first part of the definition is clarified by a non exhaustive account of some major examples of trade in human beings. The three crime phenomena the Convention explicitly stipulates are trade in human beings with a view to "the exploitation of prostitution, forms of sexual exploitation and assault of minors and trade in abandoned children".

2.3 Forms of abuse of children

In line with Article 2 of the Convention and the definition of traffic in human beings interpreted in the way as elaborated above, forms of abuse of children fall under the mandate of Europol if these crimes involve an international criminal network putting children at the disposal of others with a view to - amongst others - their sexual exploitation.

2.4 Production of and traffic in child pornographic materials

The Europol Working Party observes that the production of and traffic in pornographic materials in which images appear of children being used in pornographic performance, is not covered by the present definition of traffic in human beings in the Convention. However, on behalf of an effective fight against the traffic in human beings it would be useful if Europol could act against the production, sale or distribution of child pornographic materials. Dispersal of child pornographic images on the Internet is to be understood as a form of distribution of child pornographic materials. In order to bring these related fields of criminality under the mandate of Europol, the definition of traffic in human beings in the Convention has to be supplemented.

2.5 Proposal

In order to give Europol a sufficient mandate to help combat traffic in human beings, including the production of and traffic in pornographic material in which images appear of children being used in pornographic performances, the Europol Working Party proposes the definition of "traffic in human beings" in the annex to Article 2 of the Convention to be read as follows:

"traffic in human beings" means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue especially with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children; traffic in human beings includes also production, sale or distribution activities of child pornographic materials.

There is agreement that the possession especially of larger quantities of child pornographic materials is an indication of production, sale or distribution activities. It therefore appears not to be necessary to expressly include 'possession' in the definition. In the light of the experience gathered in the meantime, the examination of this question will be finalised before the Council decision.¹"

The definition of "traffic in human beings" in the annex to article 2 of the Convention should be amended by a unanimous Council decision in accordance with the procedures of article 43 para. (3) of the Convention. The Council should preferably take such a decision after the entry into force of the Convention and before Europol starting its activities.

3. EDU and future Europol actions

As proposed by the Project Team and after taking into account the advice of the Working Group Drugs and Organised Crime, EDU should develop different concepts in order to provide support to the Member States and to prepare the future Europol activities.

¹ *Reservation of the Belgian delegation, that wanted "the possession" of pornographic materials to be explicitly included in the definition.*

In general, duplication of effort with the institutions of the European Union (in particular the Commission in the implementation of the STOP and other programmes) and other international organisations, such as ICPO/Interpol must be avoided. Therefore, EDU will, on a regular basis, ascertain all current initiatives and, on the basis of those impacting upon Europol, facilitate the future planning of EU law enforcement actions.

The relevant substantive actions are summarised below.

3.1 Information exchange, analysis and the support of co-ordination of operations

These tasks are already within the mandate of the EDU as described in the Joint Action of 10 March 1995. Its (increasing) use via the ELO network must be emphasised to law enforcement agencies responsible for monitoring the trafficking in human beings. This task is a priority for which EDU is uniquely well equipped.

3.2 Production of a EU general situation report

The EDU will produce an EU General Situation Report, the frequency and structure should be determined by the Member States.

This report can be based upon information obtained from national situation reports (see section 4.4 below), other relevant law enforcement material and open sources. The EDU should give an overview of the information that is available and provide a framework which allows the information to be used in a standardised way.

The 1996 STOP programme consists of a number of activities in the field of trafficking in human beings and associated areas and there is a genuine risk of duplication of effort in some of their tasks. Therefore, the report must be produced taking account of the work carried out under the STOP programme, as well as data from other sources.

A progressive integration in the European Union organised crime report, produced on a yearly basis, should be prepared, as for other specific crime related general reports, under the authority of the Working Group Drugs and Organised Crime as well as the Europol Working Group.

3.3 Use of Open Sources

In respect of open sources such as the Internet, Europol could play an important role on behalf of the Member States in obtaining and exploiting the information obtained from these prolific sources. This issue has received an exceptional level of publicity recently and politicians have expressed their concern that the Internet is being used in this way. In order to avoid the same work being done in each Member State, Europol could be tasked with supplying a service to all Member States by putting resources into open source (particularly Internet) scrutiny, collating the resultant product, and supplying intelligence packages to Member States.

However there are two major problems which arise if Europol should undertake this area of work namely resources and legislation.

The first problem, that of resources, both personnel and financial, is due to the vast amount of data that is available within the open source network which would have to be carefully retrieved and analyzed. This type of work would have an additional impact on resources over and above that already mentioned. The second problem, that of legislation may arise when personal data is obtained in a proactive way in respect of operational cases.

A feasibility study must be carried out in close co-operation with the Police Co-operation Working Party, on the use of open sources, especially the implications of producing proactive intelligence packages for all Member States to further assist efforts between them. On completion of the study advice may be given on its implementation by the Heads of Europol National Units, to be finally agreed by the Europol Working Party.

3.4 Use of databases on missing children

A central database on missing children does not at present appear to be viable at E.U. level. Nevertheless, a full Member States meeting of experts will be held to study the experiences encountered in the creation of databases in the Member States (see point 4.3) paying particular attention to the compatibility and accessibility of these systems. Instant access to the national databases will be guaranteed by utilising the National Unit and ELO network. A definition of missing children should be elaborated.

3.5 The Centre of Excellence concept

This concept under the Joint Action of 29 November 1996 (96/747/JAI) is in the process of being set up within the EDU and a number of Member States have already sent details. Member State authorities are encouraged to use this facility particularly in respect of trafficking in human beings.

3.6 Training

The facilities of the EDU should be utilised to increase awareness of law enforcement officers in this field of crime, sharing the experiences and best practices developed in the Member States. When appropriate specific initiatives should be proposed in order to share new or actualised training programs (training for trainers, specific training). Such initiatives should be elaborated taking into account the STOP programme.

4. Member State Actions

The following actions are recommendations to Member States to undertake at a national level in order to ensure an effective European Union response to this field of criminality. However, almost all of the most urgent potential activities discussed by the team are referred to in the Joint Action of 28 February 1997. Therefore, the Europol Working Party urges Member States to give sufficient attention to the measures contained in this Joint Action. In the Joint Action there are two areas that the Europol Working Party especially wants to emphasise: legislation review, and witness and victims protection.

4.1 Legal review

In the Joint Action mentioned, it is stated that measures should be taken to review existing law and practice with the purpose to achieve more harmonised legislation in this field of criminality throughout the European Union. The Joint Action emphasises the need for achieving common classification of certain behaviours to make them offences in each Member State. Currently there is a notable discrepancy between some of the Member States in this context.

Aware of the complications that these legal differences may lead to, particularly for the co-operation between the law enforcement agencies within the Member States, the Working Group Europol strongly supports the principle of the review of legislation. Full use should be made of the study on the subject presently being carried out within the STOP programme.

4.2 Protection programmes

The Joint Action also provides that each Member State shall undertake the necessary measures to ensure appropriate protection for witnesses who provide information concerning offenses related to trafficking in human beings and sexual exploitation. Mentioned in this context is especially the Resolution of the Council of the European Union of 23 November 1995 on the protection of witnesses in the fight against organised crime.

At the Congresses held in Vienna in June 1996 and in The Hague in November 1996 concerning the trafficking in women, witness protection programmes were mentioned and discussed and the need for urgent action was emphasised. The Hague congress was also a preparatory meeting for the Ministers Conference held in The Hague 24 - 26 April 1997.

The Europol Working Party wants to stress the importance of witness and victim protection programmes. To be able to fight organised trafficking in human beings it is of course very important to have information about the individuals involved, the character and the structure of the criminal organisations and their modus operandi. An important source of that kind of information comes from the women who are trafficked and exploited. Accordingly, it is necessary that well-developed protection programmes exist.

4.3 Databases and Central Office

It is being recommended that all Member States establish a central office from which Europol and the Member States, via the Europol National Unit and the ELO network, can receive information in this field of criminality, especially on missing children. A further discussion is needed concerning the character of the central offices and the content of the information that would be made available, preferably in a standardised and compatible way.

4.4 Situation Reports

The Europol Working Party recommends that all Member States should create their own national reports on this field of criminality, following a common structure (to be prepared).

4.5 Participation with EDU initiatives

Member States should be encouraged to participate actively with EDU initiatives set out in section 3.

5. Conclusions and recommendations

The three core tasks which EDU is uniquely placed to perform are :

- speedy exchange of information between Member States;
- giving analytical support to international investigations;
- development of Centre of Excellence approach.

The Europol Working Party was keen that the EDU carried out also some initiatives outside the core business, and to this end, has listed worthwhile areas on which to concentrate.

Initiatives on a national level are essential. Therefore, the conclusions set out in sections 3 and 4 are divided in two areas; those for action by the EDU, and those requiring action by the Member States. The Working Group Europol insists on progressing these initiatives by implementing the EDU 1998 budget programme and fully utilising the allocation dedicated to Trafficking in Human Beings, together with the initiatives developed within the Member States, ideally in a co-ordinated way.

Accordingly, to implement these recommendations the Europol Working Party suggests an urgent secondment of one expert from a volunteering Member State until the expert provided by the 1998 budget has been recruited.
