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NOTE

from : EUROPOL
Dated : 28 May 1999
to : The Multidisciplinary Group

Subject : The production of European Union (EU) statistics on aspects of money laundering & asset seizure.

I. Introduction.

During the meeting of the Multi Disciplinary Group (MDG) of the 22nd of April 1999, Europol was invited to draft a proposal for the MDG-meeting in June on Recommendation 1 of the report of the Informal Money Laundering Experts Group on the effectiveness of anti-money laundering measures in the Member States (Crimorg 173). This recommendation dealt with the harmonisation of statistics on aspects of money laundering and asset seizure. Europol has prepared the following proposal with the support of an expert from the General Secretariat of the Council and a professor working for the National Office for Statistics in the Netherlands, specialist in statistical methodologies.

II. Evaluation of the results of the development of policy measures at EU level.

With the ratification of the Maastricht (TEU) and the Amsterdam Treaties, the Member States of the EU have made important steps towards the development of a harmonised EU policy against organised crime.

Corner stones in this respect are the development and implementation of document JAI 14 and the acceptance of document JAI 41. The development of new policies is important, but to measure their effectiveness is just as important, if not, more so.

The first initiatives that have been taken in this respect are:

- The Joint Action of 5 December 1997, which established a mechanism for evaluating the application and implementation by Member States of instruments of co-operation, intended to combat international organised crime, based on mutual evaluation.
- Crimorg 203 of 15 December 1998, containing concrete proposals regarding the mutual evaluation mechanism.

It should be mentioned that this process of evaluating policy measures at national level is common practice in areas such as economics and financial affairs and for this purpose (statistical) instruments have already been in place for many years.

In the area of the judiciary and law enforcement, in some Member States the phenomenon of policy evaluation at national level is less common. There are several reasons that could cause this situation, such as:

- a) There is often a substantial local/regional influence on the policy in criminal matters, which may hamper an evaluation at national level;
- b) A variety of organisations should contribute to the process of gathering the relevant statistical information, often with no hierarchical link between them. This creates a complex situation, both from a functional and a logistical point of view;
- c) For understandable reasons, the judiciary and law enforcement services often do not give a high priority to the production of statistical information.

As a consequence, in most Member States there is no structure in place to ensure the gathering of information with the aim to evaluate the effectiveness of their criminal policy at national level.

However, since a start has been made with the development of a harmonised EU policy against organised crime and given the reasonable expectation (see Article 30 of the Amsterdam Treaty) that these efforts will be seriously enhanced in the near future, the need to develop instruments to evaluate this policy at EU level will increase accordingly.

III. Consequences at national level.

The evaluation of policy measures will often be based on statistical material.

In order to produce meaningful statistics and evaluations for the EU, the following preconditions should be fulfilled;

- The fifteen Member States of the EU should produce the required information;
- This information should be standardised according to the same principles.

These requirements have far reaching consequences for the Member States.

1. At national level an information structure should be established - where this is not already available - suited to produce specific and well defined information;
2. This might require the development of information structures between the national unit that should produce the information for analytical purposes at EU level and the originating sources of the information. These may be local/regional services, with possibly no hierarchical link with the national unit.
3. This information would have to be harmonised and meet specific standards regarding the data itself, the level of completeness, etc.;
4. All Member States should accept and apply the same standards.

Useful statistics could be produced only if the same level of standardisation and harmonisation is implemented in the fifteen Member States, allowing for reliable conclusions and recommendations to be made.

IV. Suggestions on the proposals of the Presidency on Recommendation 1 of Crimorg 173.

As was indicated before, in many Member States there are no sophisticated information systems in place that allow for the evaluation of the effectiveness of the criminal policy at national level.

Furthermore it was explained that the development of such a system at EU level would have far reaching consequences for the Member States.

Given this situation, the suggestion of the Presidency to establish a link between the area covered by Recommendation 1 and the organised crime situation as such (see Crimorg 30 of 1999) might be too ambitious.

In this respect, reference could be made to Crimorg 203 of December 1998. In point 5 and in point 10 of this document, it was stressed by the Austrian Presidency that the evaluation should be not too broad, in order to avoid a negative influence on the effectiveness of the evaluation.

For this reason Europol would propose to limit this initiative to the already complicated areas, covered by Recommendation 1 of Crimorg 173.

If successful, this initiative could serve as a pilot project for other areas of serious/organised crime.

Furthermore, the Presidency has invited Europol to consider the possibility of establishing a link with 'integrated-procedure money laundering investigations'.

The Presidency is probably referring to an Europol project, which started in November 1997 with the aim to gather operational information on financial/ money laundering investigations. The Heads of the Europol National Units supported the proposal for this project on several occasions, but only a few Member States have responded since.

The relative failure of this project might point to a possible problem regarding the communication structure within the Member States.

The present recommendation partly covers the aim of the project that started in 1997. The remaining part of the '97 project is based on the idea that Member States would inform Europol as soon as possible, when new or for other reasons interesting forms of money laundering have been detected. This would enable Europol to inform the other Member States about these new developments. (Principle of an early warning system).

When Recommendation 1 is adopted, Europol suggests the Multi Disciplinary Group should decide that the Member States apply the early warning concept for newly detected and interesting money laundering schemes.

For this purpose, the attached template could be used. (See Appendix I)

V. **Proposed actions.**

The following proposals encompass three facets that should be considered;

- A. The identification, standardisation and harmonisation of data and procedures;
- B. The establishment of an appropriate information structure at national level;
- C. The legal consequences.

- A. Regarding the identification and standardisation of data and the harmonisation of procedures, Europol proposes the following;
 - On each of the seven items of Recommendation 1, the core notions should be identified and unambiguously defined.
 - These definitions should be discussed with experts from the Member States, in order to reach a common understanding and agreement on the content of the definitions. Depending on the item, experts involved should be from Financial Intelligence Units (FIUs), from law enforcement services and from the judiciary.

- During the discussions with the experts, attention should be given to procedural matters as well (e.g. counting rules, case identification measures, etc).
- To structure and facilitate these discussions, a draft outline on the relevant items has been produced. (See Appendix II).
- On a regular basis, statistical experts should be consulted in order to avoid shortcomings in the ultimate concept of the statistics.

Given the complex and technical nature of this topic, it will take the second semester of 1999 to finalise this task. This estimation is based on the expectation that Member States shall be able and willing to participate in the expert meetings and that the General Secretariat of the Council will co-operate with Europol.

- B. Of course it is up to the Member States to decide about an appropriate information structure at national level, but its existence is a *conditio sine qua non* for this project.

Information should be channelled from a variety of sources to a national contact point. The Europol National Unit will fulfil the interface function with Europol, but it is up to the Member States to decide which organisation should evaluate the information at national level, if they wish to do so.

During the already mentioned expert meetings, ideas could be brought forward and developed with regard to possible information structures and proposals.

It should be realised that having a structure in place does not necessarily mean that the information would be (timely) made available by the operational services. This type of work is normally seen as a burden, from which the (direct) added value for their operational work is close to nothing. For that reason it is necessary that the local management feels committed to the project, while the extra work should be limited to an absolute minimum.

Where possible, the following principle should be applied: "No rules, but tools".

C. Regarding the legal facet, the following two aspects should be given attention:

- C.1. The MDG has tasked Europol with the execution of Recommendation 1, probably with the intention to invite Europol to produce, at a later stage, the related statistics and evaluations. This would imply that the Member States are prepared to forward the relevant information to Europol. Since this information will be statistical and of a non-personal character, Europol does not foresee any legal problems in receiving this information.
- C.2. Also at national level, Europol would not expect great legal difficulties with assembling the relevant statistical data. However, this is a matter for the Member States to be considered.

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Appendix I

Place:

Date:

**Report on specific aspects of a money laundering case¹,
investigated by² _____ from³ _____**

I. Questions regarding the investigation.

I a) The investigation was based on Information coming from:

- abroad
- another investigation
- a suspicious transaction
- an informer
- own initiative
- other:

I b) The predicate offence was:

- illicit drug trafficking
- illicit trafficking in radioactive and nuclear substances
- crimes involving clandestine immigration networks
- illicit vehicle trafficking
- illicit trafficking in human beings.
- one of the above mentioned and others

¹ A money laundering case includes sheer money laundering investigations, but also the financial investigations resulting from for instance a drugs investigation and those parts of criminal (for instance drugs) investigations, that deal with financial aspects, indicating the size of the criminal profits (to be laundered) and the seized/confiscated cash and assets. Of course, the predicate offence should be within the EDU's remit, as described at Iz b) above.

² Name of the service(s) involved.

³ Name of the country

I c) Co-operation took place with the following countries:

I d) The criminal profits were gained in the period commencing
from till

II Questions regarding the modus operandi of the laundering process

II a) Which kind of financial institutions were used:

- banks
- bureaux de change
- casino's
- insurance companies
- underground banking systems
- others:

II b) Were special professions involved:

- notaries
- lawyers
- tax consultants
- others:

II c) Please give a short description of the modus operandi, including the following aspects:

- the use of shell companies or front stores
- the countries that were involved in the transfer of the money
- the nationality of foreign suspects
- the kind of investments that were made (real estate, hotels, etc)

III Questions regarding the results of the investigation.

- III a) What was the estimated size of the criminal proceeds ?
- III b) What was the value of the seizures ?
- III c) What part of the criminal proceeds were seized abroad ?
- III d) In which country(ies) were the proceeds seized?
- III e) During your investigations did you arrest those who were controlling the criminal organisation?

IV Special remarks.

- IV a) During the investigation, were you confronted with problems regarding international co-operation or otherwise and if so, could you indicate the nature, the cause and the effect of these problems ?
- IV b) Which aspects of your investigation do you consider to have been crucial for the final results ? (specific techniques, special skills, etc)

Appendix II

Outline of the topics, to be discussed with the Member States' experts.

1. General.

In Recommendation 1 of Crimorg 173, seven items have been identified on which statistical information should be gathered.

The first three items deal solely with suspicious transaction reports (STRs); they aim to identify:

- the total number of STRs (say: X)
- which part of X (say: Y) has been disseminated for investigating purposes
- which part of Y was actually used to start an investigation, or had added value for a running investigation.

Items 4-7 cover the further results of the STRs, but they encompass the results of other sources of money laundering - and asset seizure investigations as well. They aim to identify:

- the number of prosecutions and convictions
- the size of the identified criminal proceeds (say: A)
- which part of A was seized (say: B)
- which part of B was confiscated/forfeited.

For each of these four items, the role of the suspicious transaction reports should be identified.

The reason for this is that the ultimate aim of this Recommendation is to measure the effectiveness of the anti-money laundering (and asset seizure) legislation in the Member States. But having said so, it is also important to establish the role of the system of suspicious transactions in this respect, since this system requires serious efforts from the private (financial) sector.

2. Statistics on the number of disclosures.

There is no exact definition of what constitutes a disclosure in the area of money laundering. The only guidance can be found in Article 6 of the EC Money Laundering Directive 91/308/EEC, which states:

"Member States shall ensure that credit and financial institutions and their directors and employees cooperate fully with the authorities responsible for combating money laundering:

- by informing those authorities, on their own initiative, of any fact which might be an indication of money laundering,
- by furnishing those authorities, at their request, with all necessary information, in accordance with the procedures established by the applicable legislation."

The further processing of information provided by credit and financial institutions falls under national legislation/regulation which leads to a wide variety of differing systems, also in terms of data collection and other matters.

The proposed Second Money Laundering Directive is expected to widen the scope of reporting obligations to external accountants and auditors, real estate agents, notaries and other independent legal professionals, dealers in precious metals and the operators, owners and managers of casinos.

This will extend the number of data sources generating disclosures, but it will not lead to a harmonisation of the professions which are subject to disclosure requirements because some Member States already apply these requirements to an even wider range of professions. Some Member States also have general disclosure requirements for the entire.

Another important factor which has to be taken into account when comparing national statistics on disclosures is the variety of systems in place. Some Member States have compliance officers in banks and financial institutions acting as a kind of buffer with a view to forwarding only suspicious transactions to the competent authorities (Financial Intelligence Units = FIUs). This may result in a lower number of disclosures at FIU level than of systems where no filters are in place at the reporting levels.

These national features, and possibly various others, have to be taken into consideration when data on disclosures are compared between the Member States.

One of the most important issues that has to be examined in this context is - what forms the basis of a money laundering disclosure?

The most simple answer is - a financial transaction. In this context it has to be emphasised that no matter how sophisticated the reporting obligations might be, the basis for a disclosure is always a financial transaction, simple or extremely complicated ones, and that there is always a party, be it a company or an individual, on whose benefit a transaction is carried out.

If a single transaction is unusual or suspicious, it could be reported to the competent FIU and would subsequently be processed as one disclosure. But already at this very early stage, differences can occur because some systems distinguish between unusual and suspicious transactions¹. But this is only a question of definition. In fact both systems will count a single bank disclosure.

Some systems count every reported suspicious financial transaction as a disclosure, even when there is an existing disclosure to which it refers. For example company X has carried out a financial transaction which raised suspicion and led to a disclosure. In the following weeks the company carries out 15 further suspicious transactions which were disclosed as well. How many disclosures will be counted in total? The answer will range between 1 and 16.

This simple example shows that, at the moment, the number of disclosures are not comparable within the EU. Current statistics reveal this clearly - the number of recorded disclosures ranges between the Member States from 50 to 17.000 per year.

In order to achieve comparable statistics a harmonised approach is necessary within all 15 Member States for the collection of data. The idea would not be to harmonise the collection/processing of data, but to enable the various systems in place to address certain questions like 'Number of Disclosures' in the same manner.

¹ The majority of the Member States receives suspicious transaction reports. One Member State qualifies those reports as being unusual and becoming suspicious after assessment by the competent authority

In order to achieve this, it is essential to apply a common definition of disclosures.

This takes us back to differing systems of unusual and suspicious transaction reports and to other differences such as whether informal information provided by a bank is a disclosure and so on.

The following solution is put forward to address this matter:

Proposal 1: Member States should agree that each and every financial disclosure (suspicious or unusual) should be divided into the number of suspicious transactions it contains. This number should form the basis of the counted number of "Suspicious Transaction Reports - STRs". The assessment of the nature of a suspicious transaction would be carried out under the national regulations.

Of course this system has its limits in the differing reporting cultures within the Member States and does not necessarily reflect the extent of money laundering operations. However, when the number of suspicious financial transactions are counted this would provide a first step towards providing comparable data on suspicious transaction reports.

Some Member States already maintain quite sophisticated statistical data on disclosures which enable them, for example, to categorise disclosures in terms of nationalities and countries, reporting institutions, company information, techniques used, money flows, currencies etc. These statistics are commonly regarded as sensitive intelligence and could possibly be used in a later phase.

3. Statistics on the number of cases disseminated to investigation agencies, number of investigations undertaken by law enforcement and number of cases and value of assets frozen by FIUs without court order.

Investigations can be triggered by one single suspicious transaction report but they may also result from numerous reports. At this stage the purpose of collecting data is to determine the ratio between suspicious transaction reports and the number of resulting investigations.

Due to the differing systems in place, investigations are initiated at different levels. For example, police systems will check their data bases on criminal records for each suspicious transaction report. The establishment of certain links may result in the initiation of an investigation. The analysis of the nature of the financial transaction may also result in the conclusion to start an investigation. Some police FIUs investigate themselves but the majority forward cases to local police authorities for investigation. At present, the police might not keep statistics on the actual number of investigations carried out on the basis of STRs.

In general administrative systems make an analysis of the transaction and request further police and/or financial information on the concerned subjects. If the transaction is regarded as suspicious they pass the information on to judicial authorities or to the police directly. These systems, as long as they really perform a buffer function, will keep statistics on the number of cases (one single, or a number of related suspicious transactions) forwarded to law enforcement authorities.

The following proposal could be taken into account on the collection of data on the number of cases disseminated to and investigated by law enforcement agencies:

Proposal 2: The FIUs receive reports on suspicious (unusual) transaction. The administrative FIUs should record data on the number of cases (one single suspicious transaction, or a number of related suspicious transactions), disseminated to law enforcement agencies for investigation purposes.

The police/judicial FIUs should record data on the number of cases (one single suspicious transaction, or a number of related suspicious transactions) they investigate themselves, and of those, which they forward to (other) law enforcement agencies for investigation purposes.

On the other hand, law enforcement agencies should keep statistics at national level on the number of investigations initiated on the basis of suspicious transaction reports (the cases) they receive. Investigations shall mean any law enforcement effort undertaken (for a longer period of time) with a view to gathering sufficient evidence to prosecute the suspect(s). The number of running investigations where a STR contributed to the final results should also be recorded.

In some Member States FIUs have the power to freeze funds relating to STRs for a limited period of time without a court order.

Proposal 3: FIUs shall keep statistics on the number of cases and the value of the assets involved when freezing orders are issued without a court order. Statistics on the outcome of those freezing orders should also be maintained e.g. how many freezing orders led to a seizure by a court and how many freezing orders had to be withdrawn.

Another important aspect is the ratio between investigations (whether based on a STR or not) and the outcome of court proceedings relating to those investigations.

Proposal 4: Law enforcement authorities shall keep track of the results of their investigations

- induced by STRs
- and those from other sources, which involve aspects of money laundering and asset seizure, once they are passed on for prosecution.

They should also record data on the assessment of the criminal proceeds, for which a common definition has to be developed.

In co-operation with prosecuting services, those agencies might keep statistics on the number of prosecutions, convictions and of the assets, confiscated/forfeited as a result of the investigations.

4. Number of money laundering prosecutions and convictions and number of money laundering prosecutions where assets were seized and confiscated.

There is a (growing) number of Member States that have criminalised money laundering as such. So convictions are made under national money laundering legislation, referring to a violation of a particular money laundering article in the penal code. However, there is also a

number of Member States that convict perpetrators for receiving or handling stolen goods/property, or for participating in a criminal organisation, even when this would include money laundering activities. This situation complicates the gathering of statistical information on the prosecution and conviction for infringements of the money laundering legislation.

A further obstacle might be the lack of information concerning the role of a STR which might have triggered or contributed to penal proceedings.

Since there seems to be a limited number of prosecutions/convictions in field of money laundering within the Member States it should not be unduly difficult to obtain the required data without overburdening the system.

Proposal 5: Prosecuting services shall keep statistics on the number of money laundering investigations they prosecute and of the money laundering charges made within the framework of the prosecution of the predicate offence. They shall also keep statistics on the outcome of their prosecutions in terms of convictions. Those records should be kept in such a way, that they would also show the number of prosecutions and convictions, where a STR was involved.

Proposal 6: The prosecuting services should assess the number of investigations where assets were seized (by the courts) and record the amounts involved. The type of those assets should be indicated according to an agreed categorisation. Furthermore it should be recorded which parts of the seized amounts were finally confiscated/forfeited.

It should follow from the records in how many cases a STR was involved.

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