COUNCIL OF
THE EUROPEAN UNION

Brussels, 12 November 1999

9917/3/99
REV 3

LIMITE

CRIMORG 96

I/A ITEM NOTE

From :	Article 36 Committee
to :	COREPER/Council
No. prev. doc.:	9917/2/99 CRIMORG 96 REV 2
Subject :	Finalisation and evaluation of the Action Plan on Organised Crime: - Draft Report to the Helsinki European Council

Delegations will find attached a revised version of the draft report to the Helsinki European Council on the finalisation and evaluation of the Action Plan on Organised Crime which was discussed at the MDG meeting on 2 and 3 September 1999 and on 10 November 1999 and endorsed by the Article 36 Committee on the same day.

The MDG proposes that the draft report should be submitted COREPER/Council with a view to its finalisation as quickly as possible. In addition account should be taken of the fact that the text may be subject to change in the light of relevant developments.

It should also be noted that document 9037/99 CRIMORG 67 which is referred to in the draft report is in the process of being updated by the Council Secretariat. The new text of that document will be made available as soon as possible.

Heads of State and Government are invited to:

- take note of the report; and
- instruct the Council to continue, as a matter of priority, its work on the development of follow-up measures to the 1997 Action Plan on organised crime.

Draft Report to the Helsinki European Council

I. The adoption of the 1997 Action Plan

1. The Dublin II European Council, meeting on 13-14 December 1996, decided to establish a high-level group of senior officials in order to draft an Action Plan containing specific recommendations for action against organised crime, including realistic timetables for carrying out the work.

2. The work of the high-level group, meeting under the Dutch Presidency, resulted in the Action Plan to Combat Organized Crime, which was adopted by the Council on 28 April 1997 (OJ C 251 of 15.08.1997, p.1), and endorsed by the Amsterdam European Council in June 1997. This Action Plan contains 15 political guidelines and 30 more detailed recommendations. The period of implementation of the Plan of Action ends on 31 December 1999.

3. Under the Luxembourg Presidency, a Multidisciplinary Group on Organised Crime (the MDG) was established, in accordance with Recommendation 22, to take the Action Plan forward. The Multidisciplinary Group brings together operational law enforcement practitioners, prosecutors and policy makers at a senior level.

II. Implementation of the 1997 Action Plan

4. Under the Luxembourg Presidency and the subsequent United Kingdom, Austrian, German and Finnish Presidencies, significant and substantive progress has been achieved in the implementation of the Action Plan (see 9037/99 CRIMORG 67). The amount of progress is all the more remarkable considering that the Action Plan has only been in force approximately two and a half years. Examples of this progress are:

- a mutual evaluation mechanism has been established under a Joint Action to identify problems in relation to implementation of measures; a first round of evaluations has been successfully undertaken and is close to completion; arrangements have also been made for a second set of evaluations which will commence in 2000,

- a European Judicial Network has begun to work to enhance international co-operation; a pilot study on the development of a telecommunications system for the Network is expected to get under way in the near future,

- a Contact and Support Network has been established to further improve the annual situation reports on organised crime,

- Joint Actions have been adopted on the Falcone programme to combat organised crime, on money laundering and asset tracing, on the criminalization of participation in a criminal organisation, on corruption in the private sector and on best practices in international mutual assistance,

- a Pre-accession Pact has been developed with the candidate countries,

- further measures have been taken in respect of the prevention of organised crime and the European Union strategy against high-tech crime,

- in conjunction with the adoption of formal Common Positions, the Union has made its voice heard in the negotiations at the UN on the draft Convention on transnational organised crime and in the Council of Europe on the draft Cyber-crime Convention.

5. The Vienna European Council in December 1998 called for a strengthening of EU action against organised crime in the light of the new possibilities opened by the Amsterdam Treaty. Paragraph 47 of the 1998 Action Plan endorsed by the Vienna European Council referred to the finalisation of the 1997 Plan of Action, evaluation of its implementation and consideration of follow-up steps to be taken.

6. The Tampere European Council in October 1999 paid particular attention to serious cross-border crime. The Presidency Conclusions call for a Union-wide fight against crime and point the way forward in respect of such issues as crime prevention, the establishment of a European Police Chiefs operational Task Force and of a European Police College, the establishment of EUROJUST, the role of Europol, mutual recognition of decisions and judgments, approximation, full mutual legal assistance in the investigation and prosecution of serious economic crime, and calls for the adoption of the 2000-2004 European Strategy against Drugs.

The Tampere European Council made a number of recommendations regarding special action against money laundering.

7. The first progress report from the MDG on the state of implementation of the recommendations in the 1997 Action Plan was submitted to the Cardiff European Council on 15-16 June 1998 for its consideration and approval. This progress report set implementation in the wider context of an effective response by the European Union to organised crime.

8. A corresponding progress report from the MDG was submitted to the Vienna European Council in December 1998.

III. Evaluation of the implementation of the 1997 Action Plan

9. The notable success that has been achieved in the implementation of the 1997 Action Plan has been due to a large extent to the specificity of, and timetables contained in, the Action Plan. Once the Member States had agreed on the priorities laid out in the Action Plan, this strong consensus helped to create the political and professional climate required at both the EU and the national levels to take the necessary decisions.

10. From the point of view of implementation, the recommendations contained in the 1997 Action Plan can, broadly speaking, be divided into four groups:

    a) recommendations that have been implemented;

    b) recommendations that have been implemented, but can justifiably be deemed to require significant follow-up activity;

    c) recommendations that can be deemed to require continued activity on a standing basis; and

    d) recommendations that have not yet been fully implemented.

    Detailed particulars of the action taken in respect of the recommendations are set out in document 9037/99 CRIMORG 67.

11. The first group of recommendations are those which have been implemented and where the measures called for have, by and large, been carried out. Nevertheless, consolidation of the results achieved may be useful. The recommendations falling in this group are the following:

- 1. Examination of the appropriateness of the designation of a national coordination body in the Member States.

- 9. The use of structural funds to alleviate the circumstances that could contribute to the development of organized crime.

- 11. Adoption of a Joint Action on a multi-annual programme to combat organized crime - the Falcone Programme.

- 17. Adoption of a Joint Action on participation in a criminal organisation; further work is being undertaken on the portion of the recommendation concerning the need for an examination of the extent to which and the priority areas within which a possible approximation of the laws of Member States could contribute to the prevention and control of organised crime.

- 21. The establishment of a network for judicial cooperation, and a study of the place and role of judicial authorities in their relations with Europol. (Nonetheless, although the EJN has been set up, further study is required into the role of judicial authorities in their relations with Europol and with EUROJUST particularly in the light of the conclusions of the Tampere European Council.)

- 22. The establishment of the Multidisciplinary Group.

- 23. Enabling Europol to take up its activities.

12. The second group consists of recommendations which have been implemented but nonetheless can be deemed to require significant follow-up activity. The recommendations in this group are the following:

- 2. The establishment of a Contact and Support Network for the collection and analysis of data on organised crime. (The Network has been set up. Annual Situation Reports which are being produced require continuous development and the candidate countries are being gradually incorporated into this work. Further work is also needed on the rapid exchange of data among law enforcement and other authorities.)

- 3. The development of a Pre-accession Pact. (The Pact has been finalised and on-going discussions are taking place with the candidate countries within the Pre-accession Pact Experts Group on Organised Crime - PAPEG.)

- 5. A cross-pillar study on high-technology crime. (The study has been conducted but a "policy of ensuring efficient public protection" still needs to be developed. The Commission is considering making proposals arising from the study.)

- 10. Regular consultation by the Member States with the competent Commission departments with a view to analysing cases of fraud. (Consultation has taken place with UCLAF on EU fraud. This process will be maintained with the recently established anti-fraud unit, OLAF.) .

- 12. Measures to shield certain vulnerable professions from the influence of organised crime. (The Charter of the European Professional Associations in supporting the fight against organised crime was signed in July 1999. Further initiatives will be considered as appropriate.)

- 15. Conducting mutual evaluations. (The evaluation mechanism has been put in place and is operating successfully. New evaluation topics will be selected.)

- 19. National contact points for law enforcement cooperation have been set up with a central contact point in each Member State. The relevant material on the contact points must be kept up to date.

13. The third group contains recommendations in respect of which progress has been made, but further long-term work is needed. The following recommendations in this group cannot be "finalized" in the strict sense of the term by the end of 1999:

- 4. The development of concrete proposals for co-operation with third countries.

- 6. Development of a comprehensive policy on corruption.

- 18. Preventing and controlling those forms of crime which affect the financial interests of the Communities, including the issues of the liability of legal persons; long time-limits for the prosecution of serious offences connected with organized crime; and fraud and counterfeiting relating to all payment instruments.

- 20. The establishment, as appropriate, of national multidisciplinary integrated teams specifically in the area of organized crime.

- 25. Further development of Europol's mandate and tasks in accordance with articles 30 and 32 TEU (this item will also have to be examined with reference to the Tampere Council conclusions.)

- 27. Granting priority to money-laundering and financial crime in discussions with the applicant countries.

14. The fourth group of recommendations has not been fully implemented, as yet, and cannot be finalized within the original timetable, which will come to an end on 31 December 1999. Nevertheless, a substantial amount of work has taken place in respect of the recommendations in this last group:

- 7. Provision in legislation for the possibility that applicants who have committed offences connected with organised crime can be excluded from participation in tender procedures.

- 8. Collection of information with respect to natural persons involved in the creation and direction of registered legal persons. Study of how such data could be systematically compiled and analysed and be available for exchange

- 13. Ratification of eight non-EU Conventions (some additional ratifications have been made, but full ratification of all of the Conventions has not yet been reached).

- 14. Ratification of six 6 EU Conventions and protocols (some additional ratifications have been made, but full ratification of all of the Conventions has not yet been reached).

- 16. Finalization of the MLA Convention, consideration of instruments adopted by the Council regarding persons who cooperate with the judicial process, examination of reservations with regard to the 1959 MLA Convention, work on the transboundary application of investigative methods.

- 24. Elaboration of the possibilities for Europol to cooperate and liaise with third countries and international organizations.

- 26. Work on money laundering and confiscation of the proceeds of crime (notable activity has been carried out in this respect. It is a further priority area identified by the Tampere European Council.)

- 28. Further development of legislation relating to criminal proceedings and procedures, international cooperation and financial investigations.

- 29. Work on preventing and controlling organized crime in connection with fiscal fraud.

- 30. The development of a common policy on financial centres and off-shore facilities beyond the jurisdiction of Member States .

15. The delay in giving full effect to the ten recommendations listed immediately above has been due to a variety of reasons. First, some of the recommendations were formulated in such broad terms that they require a broad range of measures, some of which have actually been adopted, for their implementation. Second, the drafting of certain instruments has demonstrated that, on some issues, the Member States have quite divergent views on the best way forward. Third, in a number of areas (in particular in respect of recommendations 13 and 14) the national authorities and/or legislatures of some Member States have, for a variety of reasons, acted more slowly than expected. Fourth, important new issues have been placed on the agenda of the Multidisciplinary Group and this has reduced the time available for implementation of the original Action Plan. Despite the difficulties involved, work on the Action Plan has continued to be the major priority for the MDG.

16. The Vienna European Council called for consideration of a follow-up to the Plan of Action to combat organized crime. In that context paragraphs 43 ff. of the 1998 Action Plan on an area of freedom, security and justice make provision for a number of specific elements which have a direct bearing on an EU strategy against organised crime. To a considerable extent, the elements of the December 1998 Action Plan and the unimplemented elements of the 1997 Plan of Action overlap. As already noted, the Tampere European Council in October 1999 confirmed the commitment of the European Union to reinforcing the fight against serious organised and transnational crime. In addition that Council agreed on a series of measures to be taken to tackle such crime. Further elements to be considered in this respect are contained in the Council resolution of 21 December 1998 on the prevention of organised crime or have been identified through other developments (for example the recommendations which have emerged in connection with work on the annual Situation Reports, and the work on Common Positions on the proposed UN Convention against Transnational Organised Crime and its protocols, and on the proposed Council of Europe Cyber-Crime Convention).

17. In the circumstances, arrangements are being made for the development of a European Strategy on the prevention and control of organised crime for the beginning of the new Millennium which will specifically address the follow-up called for by the Vienna European Council and the action called for by the Tampere European Council. The current draft text of this Strategy, which takes account of the outstanding recommendations of the 1997 Action Plan, is set out in 9423/1/99 CRIMORG 80 REV 1.

18. In general, it is clear that the experience of the 1997 Action Plan to combat organised crime has been extremely positive and successful. By setting priorities and timetables and allocating responsibilities at an international level, it has made an unprecedented and crucial contribution to the development of national and international responses to the challenge of organised crime against the European Union and its Member States. At the same time it must be acknowledged, as recognised in the further Action Plan adopted in December 1998, that the 1997 Action Plan can be deemed to have only laid the groundwork for further action. There is undoubtedly still much work to be done in the field of combating organised crime and it is important that the level and pace of progress is maintained.