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NOTE

from : Presidency
to : Multidisciplinary Group on Organised Crime (MDG)
Subject : Multidisciplinary Group on Organised Crime 1997-2007:
 looking back and preparing the future

Creation of the MDG

The European Council, meeting in Dublin on 13-14 September 1996, « *underlined its absolute determination to fight organized crime and stressed the need for a coherent and coordinated approach by the Union. It decided to create a High Level Group to draw up a comprehensive Action Plan containing specific recommendations, including realistic timetables for carrying out the work.* »

The High Level Group prepared an Action Plan to Combat Organised Crime, which was adopted by the European Council in Amsterdam on 16-17 June 1997 ¹.

¹ OJ C 251, 15 August 1997, p. 1.

Recommendation 22 of the Action Plan to Combat Organised Crime provided that " *Within the Council, a multidisciplinary Working Party on Organized Crime, should be established within the Third Pillar structures, consisting of competent high level authorities, for the purpose of developing policy orientations to coordinate the fight against organized crime. (...) The new Working Party on Organized Crime, to be attended by competent authorities such as representatives of comparable coordination teams wherever such teams have been designated, or at least with the input of such teams, together with officials involved in policy-making and representatives of Europol, could be assigned the task of pinpointing, on the basis of assessment of practical cooperation, difficulties resolvable only by means of political decision-making, and design the strategies and policies of the Union in the fight against organized crime and prepare matters which require decisions at a high level. Examples that come to mind are decisions on new instruments (for instance relating to practical police cooperation), priorities in tackling organized crime and other forms of agreements needed for the efficient fight against organized crime.*"

The formal creation of the MDG took place through a decision of the Coreper on 10 July 1997, which defined the mandate of the group as follows ¹ :

- (a) implementation, or monitoring of the implementation by other competent working parties, of Action Plan recommendations principally addressed to the Council (...)
- (b) monitoring of the implementation of recommendations which are not principally addressed to the Council;
- (c) assessment of practical cooperation, involving in particular the pinpointing of difficulties resolvable only by political decision-making;
- (d) designing the strategies and policies of the Union in the fight against organized crime;
- (e) preparation of high-level decisions, such as decisions concerning new instruments (e.g. relating to practical police and judicial cooperation), priorities in tackling organized crime and other forms of agreement needed for the efficient fight against organized crime.

¹ 9239/2/97 CK4 24

Activities of the MDG

During its first 10 years of existence, the MDG covered a wide range of issues. Some of its activities may be presented as follows :

1. Specific anti-OC measures

- General OC Strategy
 - Resolution of 21 December 1998 on the prevention of organised crime with reference to the establishment of a comprehensive strategy for combating it
 - Millenium Strategy (2000) and the mid-term report (2003)
 - Council Conclusions of 2 Dec. 2004 on the development of a strategic concept with regard to tackling cross-border organised crime at EU-level
 - Drawing up (until 2001) the Organised Crime Annual Report and discussing it (until 2005) and, currently, discussing the OCTA and drawing up annual priorities for the Council
- Other measures
 - Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organization in the Member States of the European Union
 - Framework Decision on organised crime (finalised, not adopted yet)
 - UNTOC : several Common Positions adopted
 - alternative (administrative) approach (Council conclusions of 2 Dec. 2004)
 - public-private partnership (Council Resolution of 29 April 2004 on a Model Protocol for the Establishment in Member States of Partnerships between the Public and Private Sectors to Reduce the Harm from Organised Crime)

2. Measures dedicated to OC primary offences

- Trafficking in Human Beings:
 - Council Recommendation of 27 Nov. 2003 on the improvement of methods of prevention and operational investigation in combating organised crime involving trafficking in human beings
 - Council Conclusions of 27 April 2006 on preventing and combating trafficking in human beings on the basis of the EU Action Plan and including trafficking in connection with major international events
 - Action Plan on trafficking in human beings (1 Dec. 2005)
 - Council of Europe Convention on trafficking in Human beings: Common position of 25 oct. 04

- Money laundering
 - Joint Action 98/699/JHA of 3 December 1998 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime
 - Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information
 - Common Position of 19 Nov. 2004 on the CoE Convention on money laundering and the financing of terrorism

- War crimes:
 - Council Decision 2002/494/JHA of 13 June 2002 setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes
 - Council Decision 2003/335/JHA of 8 May 2003 on the investigation and prosecution of genocide, crimes against humanity and war crimes

- Cybercrime
 - Elements of the Union's strategy against high tech crime (3 Dec. 1998)
 - Council conclusions of 19 Dec. 2002 on information technology and the investigation and prosecution of organised crime
 - Common Position 1999/364/JHA of 27 May 1999 on the Council of Europe Convention on Cyber-Crime

- Counterfeiting of the Euro
 - Council Recommendation of 2 October 2003 on measures to protect the euro against counterfeiting
 - Council Decision 2001/887/JHA of 6 December 2001 on the protection of the euro against counterfeiting

- Child pornography
 - Council Decision 2000/375/JHA of 29 May 2000 to combat child pornography on the Internet

- Corruption
 - Common Position 97/661/JHA of 6 October 1997 on negotiations in the Council of Europe and the OECD relating to corruption
 - + UN Convention on corruption : 3 Common Positions for the negotiation and 1 Common Position for the 1st Conference of State Parties
 - Council conclusions of 14 April 2005 on the Commission Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on a Comprehensive EU Policy against Corruption
 - Draft Council Decision on the setting up of a European Anti-Corruption Network

- Firearms
 - UNTOC Protocol on firearms: 1 Common Position
 - Draft directive on firearms

3. Mutual evaluations (4 rounds)

- Joint Action 97/829/JHA of 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime
- questionnaires
- evaluation missions
- national reports
- interim reports
- final reports

4. Exchange of information

- Council decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences
- Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union
- Draft Framework Decision data protection
- Principle of availability (Report of the Friends of Presidency), later on transferred to an ad hoc working group and currently suspended (integration of Prüm)

5. External relations

- Enlargement : Pre-Accession Pact on organized crime between the Member States of the European Union and the applicant countries of Central and Eastern Europe and Cyprus, adopted 28 may 1998

- Bilateral relations :
 - Russia
 - EU Action Plan on Common Action for the Russian Federation on Combating Organised Crime (2000)
 - Joint Declaration by the Ministers for Justice and Home Affairs of the European Union and the Russian Federation on the designation of central contact points to exchange information on organised crime (25 April 2002)
 - Russian speaking criminality: merged with the Action Oriented Paper on Russia
 - Western Balkans : Council Conclusions of 19 November 2004 on the Report of the Friends of Presidency on the fight against organised crime originating from or linked to the Western Balkans
- Multilateral negotiations (may include : common position, negotiation mandate for the Commission, general coordination, authorisation to sign and to conclude the instrument)
 - UN Convention on corruption (3 common positions) + Conference of State parties (1 common position)
 - UN Convention on transnational organised crime + protocols + Conference of State Parties (common positions)
 - CoE conventions on cybercrime prevention of terrorism, trafficking in human beings, money laundering, sexual exploitation of children,

6. Networks (legal basis, annual reports, ...)

- EUCPN (legal basis, annual reports)
- JIT Network (+ model agreement),
- War Crimes Network (legal basis)
- Anti-corruption Network (legal basis)

7. Various

- Joint action 98/245/JHA of 19 March 1998 establishing a programme of exchanges, training and cooperation for persons responsible for action to combat organized crime (Falcone programme)
- Council Decision concerning arrangements for cooperation between Asset Recovery Offices of the Member States (finalised, not adopted yet)
- Draft conclusions on undercover operations (currently in discussion)

Main features of the work of the MDG

Following the Action Plan to Combat Organised Crime, the main features of the MDG should be:

- focus on organised crime
- multidisciplinary work, involving both Ministries of the Interior and Justice (where applicable)
- high level composition
- strategic dimension

Multidisciplinary approach >< focus on organised crime ?

The interest for a multidisciplinary group has sometimes made it difficult to maintain the focus on organised crime. Because the MDG is the only working group in the third pillar with an horizontal scope of action, many issues are discussed there even though they go beyond organised crime. This is, for example, the case for :

- coordination of EU positions in third fora
- third pillar networks
- mutual evaluation ¹
- war crimes issues

¹ While the second round on drugs was very much focused on OC, the other rounds are more related to transnational co-operation in general.

- exchange of information
- crime prevention

This creates a rich variety for the work of the MDG and makes it truly multidisciplinary. It may also give rise to difficulties as agendas of the group sometimes give the impression of a lack of coherence. One way of dealing with this variety could therefore be to increase the systematic approach of these non strictly OC issues. For mutual evaluations, for example, there is now a routine method to deal with and delegations are accustomed to it. The same kind of systematic approach could be adopted for issues such as coordination in third *fora* (see the proposal on a proactive approach, approved in MDG 24 April 07¹) or third pillar networks (a more standard way of dealing with such networks could be defined, for examples on issues such as the secretariat, relationship with the Council, activity reports, ...).

High level composition

The Action Plan of 1997 emphasises the need for high level composition. This is all the more important when considering the wide variety of the work of the MDG, as indicated above. MDG head of delegations should therefore have a horizontal picture and must be able to coordinate the national positions on all issues covered by the group, without however infringing on the role of CATS.

Future activities for the MDG

"Permanent" part

One specificity of the MDG is that an important part of its programme is constant to some extent with a permanent point on the agenda (mutual evaluations), some annual points (OCTA, EUCPN reports) and some points submitted on regular basis (coordination in third *fora*).

¹ 7690/07 CRIMORG 65

Processing and exchange of information

A clearer view of the work of the MDG for the future would benefit from a clarification regarding the processing and exchange of information. Previous work (Decision on the exchange of information regarding terrorist offences, Framework Decision on simplifying the exchange of information) and the current negotiation on data protection seem to imply a central role for the MDG. However, the measures taken for the implementation of the principle of availability (particularly the creation of an ad hoc working party), the integration of the Prüm Treaty (which was discussed in CATS) as well as the discussion of the initiatives on access to VIS and Eurodac (the Police Co-operation Working Party) have made things less clear. With the increasing importance of the subject of processing and exchange of information in the third pillar, it seems that a single working party should focus on this issue. This horizontal question will, however, need to be discussed at a higher level.

Another comprehensive strategy on organised crime ?

After the guidance of the Action Plan to combat organised crime (1997), the MDG elaborated the millennium strategy on organised crime (2000), which was adopted by the Council and was meant to be the main programme for the MDG for the next 5 years. As required in the millennium strategy, a mid-term review took place in 2003 and led to conclusions of the Council. But there has been no final report for this Millennium Strategy, although it covered only the period 2000-2005. The Communication of the Commission "Developing a strategic concept on tackling organised crime" of 2 June 2006 ¹ refers to the main recommendations contained in the mid-term review of the Millennium Strategy, but the discussion of this communication, initiated in the MDG on 1 July 2005, was not continued.

¹ COM(2005)632 final, 9997/05 CRIMORG 54.

Two elements must also be taken into account. The first one is the The Hague programme and its Action Plan, which already set the priorities for the whole area of Freedom, Security and Justice and contain detailed proposals related to the work of the MDG. The other element is the new architecture for internal security, which is especially developed in the field of organised crime, with annual priorities adopted by the Council on the basis of the OCTA.

Given, on the one hand, the limited effects of the Millennium Strategy and, on the other hand, the already existing priorities derived from the The Hague programme and the annual priorities based on the OCTA, it is proposed not to initiate any new work on a comprehensive strategy on organised crime. Such a general strategy would require significant efforts with the risk of creating only more confusion.

Delegations are invited to approve this proposal.

Monitoring of some efforts on the prevention of organised crime

Some areas crucial for a successful prevention of organised crime deserve special attention by the MDG, especially if it is decided not to work on a new comprehensive strategy, because they are not in the core business of the JHA Council and therefore risk to be neglected.

That includes areas on which the MDG has already worked such as the administrative approach (see 14125/2/04 CRIMORG 123 REV 2) or the partnership between private and public sectors (see 6627/3/04 CRIMORG 10 REV 3). It also includes for example the area of statistics in criminal matters.

It is therefore proposed that the Commission be invited to report, once during each Presidency, on the latest developments (in particular those related to the Forum on the prevention of organised crime which is managed by the Commission) in these sectors.

Can delegations agree on this proposal ?

A new focus for the fight against organised crime: an EU approach for special investigative techniques

Instead of drawing up a strategy dealing with a very wide range of issues, a proposal could be to initiate more specific work on several aspects of the fight against organised crime.

For most of the areas identified in the mid-term report (2003) on the Millennium Strategy, there is not much that the MDG could currently usefully add to the work already being done.

However, the sector of special investigative techniques deserves particular attention for several reasons :

- special investigative techniques are necessary to ensure efficient prosecution and to dismantle criminal organisations by reaching their leaders.
- special investigative techniques raise major legal and practical difficulties as far as trans-national co-operation is concerned : this is due to the sensitivity of these techniques and the difference between national legislations. The legal instruments on co-operation in criminal matters rarely deal with these investigative techniques and, when they do, the regime is very general (see Article. 14 of the 2000 MLA Convention on under-cover investigations) or difficult to apply (see Articles 17-22 of the 2000 MLA Convention on the interception of telecommunications). Directive 2006/24/EC of 15 March 2006 ensures that data necessary for investigations can be made available by the service providers, but the legal regime to access these data in a trans-national case makes it still very difficult to obtain them.
- the lack of rules and practical solutions regarding the use of special investigative techniques in trans-national cases is all the more problematic when considering the current stage of development of both police and judicial co-operation (principle of availability, joint investigation teams, mutual recognition of judicial decisions).

On 12 June 2007, the Council adopted a Resolution on simplifying the cross-border deployment of undercover officers. This resolution is a first step towards more concrete work on the subject, including a possible legislative instrument.

This initiative on undercover operation could serve as a pilot project but should form part of a more general programme to deal with both practical and legal challenges linked to the use of investigative techniques at trans-national level.

Types of investigative techniques (to be further discussed) could include:

- undercover operations
- use of audio or video surveillance tools inside private premises
- interception of telecommunications, including Internet communications
- access to electronic evidence (including data retained by telecommunications service providers)
- witness protection

Two methods could be explored to deal with this sector :

- method A: drawing up a programme of measures to facilitate the use of special investigative techniques in cross-border cases ;
- method B: making special investigative techniques the subject of the 5th round of evaluation: this would include the implementation of Articles 12 (controlled deliveries), 14 (under-cover investigations) and 17-22 (interception of telecommunications) of the Convention of 29 May 2000, but the scope could be extended to the list of special investigative techniques mentioned above.

Both objectives could be pursued simultaneously, in order not to postpone the first part until the end of the evaluation round which will take a few years. The work on a programme of measures, and if appropriate, on some first implementing measures could already be initiated. Should examination which is called for by the Council Resolution of 12 June 2007 on simplifying the cross-border deployment of undercover officers, demonstrate a need for further work, this could be a first implementation measure. This work would progressively benefit from the knowledge gained through the mutual evaluation round.

Delegations are invited to agree:

- *that special investigative techniques should become a priority area for the MDG in the years to come; and*
- *discuss the methods proposed and decide whether method A and or B should be used and whether both methods should be used simultaneously.*
