

WHITE PAPER
on transnational organised crime



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Contents

PREFACE 5
EXECUTIVE SUMMARY 7
CHAPTER 1. INTRODUCTION 9
1.1. The Council of Europe and transnational organised crime 9
1.2. The White Paper process 10
1.3. Legislative and policy activities related to organised crime as a transnational phenomenon 12
CHAPTER 2. FEATURES, TRENDS AND DEVELOPMENTS IN TRANSNATIONAL ORGANISED CRIME 15
2.1. Difficulties in identifying trends in transnational organised crime 15
2.2. New trends identified in transnational organised crime 16
2.3. Transnational organised crime: key features and responses 17
CHAPTER 3. IDENTIFIED KEY AREAS 19
3.1. Enhancing international co-operation through networks 19
3.2. Special investigative techniques 25
3.3. Witness protection and incentives for co-operation 27
3.4. Administrative synergies and co-operation with the private sector 32
3.5. Recovery of assets 35
CHAPTER 4. RECOMMENDATIONS AND PROPOSALS FOR FUTURE ACTION 39
4.1. General recommendations 39
4.2. Enhancing judicial and police co-operation 40
4.3. The use of special investigative techniques 40
4.4. Witnesses, state witnesses and collaborators 40
4.5. Synergies and co-operation with other entities 41
4.6. Recovery of assets 41
CHAPTER 5. CONCLUSIONS OF THE COMMITTEE 43
APPENDIX 1 – SELECTED TEXTS 45
APPENDIX 2 – LIST OF ABBREVIATIONS 47

Preface

Transnational organised crime (TOC) is a crucial issue in many Council of Europe member states as it represents a major threat to the rule of law with serious consequences for its victims, the economy and social development. According to some studies, approximately 3 600 international organised criminal groups are active in Europe. The Council of Europe, as the leading organisation dealing with the protection of democracy, human rights and the rule of law, is committed to playing a key role in the fight against TOC. Prepared at the request of the Committee of Ministers, this White Paper establishes areas in which the Council of Europe could contribute to fighting TOC and identifies specific tasks that could be carried out better or more efficiently by the Organisation.

How are special investigative techniques (SITs) being used? How is remote computer access used? What is the reality of cross-border witness relocation? Is the lack of mutual trust a real problem among Council of Europe member states? The White Paper includes a list of recommendations aimed at defining which measures should be applied in the following five key areas: SITs, witness protection, co-operation with the private sector, recovery of assets, enhancing international co-operation and the widening of networks.

A specialised approach is needed, but there is the risk that the fragmented results will not be used for common assessment and action to fight TOC. For the first time, a group of experts from member states and representatives of seven monitoring bodies of the Council of Europe – all with extensive experience in fighting organised crime – have worked together in the preparation of this White Paper. Working in such a multidisciplinary manner provides clear added value and is essential in the identification of concrete solutions.

A major shortcoming emphasised by the White Paper is the geographical fragmentation of international co-operation: we need to promote a more efficient implementation of Council of Europe standards in this field. Without proper enforcement of legal tools, international co-operation is hampered or even impossible. In recent decades, some 30 conventions have been negotiated within the Council of Europe to establish a common basis for co-operation in criminal matters across Europe and sometimes beyond. These conventions cover such co-operation mechanisms as extradition, mutual legal assistance and the transfer of sentenced persons, but they also address specific forms of crime which have a transborder dimension, such as terrorism, trafficking in human beings and cybercrime.

Many of these conventions have been widely ratified. Moreover, in recent years an increasing number of non-European states have "joined" the Council of Europe family by acceding to these conventions.

I trust that this White Paper will be a helpful tool for policy makers and practitioners alike.

Thorbjørn Jagland
Secretary General of the Council of Europe

Executive summary

Transnational organised crime (TOC) is a major threat to global security, and can cause significant social and economic damage. Prevention efforts need to be increased in order to contain this phenomenon. TOC benefits from certain legal loopholes and law enforcement agencies have difficulty in reacting quickly to criminal businesses which use very sophisticated methods to conceal their activities and the proceeds of their crimes, and take advantage of globalisation and the use of information and communication technologies (ICTs).

The threat of TOC is an increasingly important issue in many Council of Europe member states, and thus for the European Committee on Crime Problems (CDPC).[1] The setting up of an Ad hoc Drafting Group on Transnational Organised Crime (PC-GR-COT) was approved in 2012 and the terms of reference of the group included the drafting of a White Paper on TOC covering possible actions to be undertaken by the Organisation in this field.

In this White Paper, special attention has been given to identifying areas in which the Council of Europe could contribute to fighting TOC, actions it could carry out better or more efficiently, and problems which have not been addressed specifically by other international or supranational organisations or which should be co-ordinated with actions of the Council of Europe. Simply stating that the Organisation should undertake initiatives in the field of preventing and combating TOC will neither help to address the problem nor find the needed synergies.

To this end, rather than discussing conceptual issues that are well known with regard to organised crime and its transnational implications, the Ad hoc Drafting Group focused on priorities with regard to efficiency in combating TOC through a criminal response. The White Paper does not aim to set out priorities from an operational point of view or to undertake a threat or risk assessment of TOC: it aims to identify specific areas where action should be taken to improve the criminal response to TOC. In defining these possible areas of action, reports prepared by the United Nations Office on Drugs and Crime (UNODC),[2] the European Police Office (Europol)[3] and the European Parliament of September 2013[4] as well as national expertise were considered. The main outcomes are:

- there are enough legal structures in place. The main problem does not appear to be a lack of legal instruments, but rather their implementation in practice;
- the identification of new trends in TOC helps to set priorities with regard to certain types of crime and to define operational policies. However, when enhancing the efficiency of the criminal response to TOC, there are common deficiencies in the systems of co-operation or the criminal justice systems that should be addressed at legal as well as practical levels;
- there is a need to identify why there is no adequate application of the existing instruments, in particular, international co-operation at police and judicial level. There are different monitoring bodies that analyse the implementation of the conventions in question. A common approach, bringing together the expertise gathered by Council of Europe monitoring bodies, would help to identify the problems, therefore allowing common action to be taken to overcome them;
- as the group was aware of the impossibility of carrying out an analysis of all the existing problems in fighting TOC, it decided to focus on those that are generally highlighted as essential for an adequate criminal response to TOC. The members of the group confirmed the assessments of broader studies and brought their own very valuable practical experience to the table;

1. Set up in 1958, the CDPC was entrusted by the Committee of Ministers with the responsibility for overseeing and co-ordinating the Council of Europe's activities in the field of crime prevention and crime control.
2. UNODC (2010), *The Globalization of Crime. A Transnational Organized Crime Threat Assessment*, United Nations Office on Drugs and Crime, Vienna, available at www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf, accessed 11 September 2014.
3. European Police Office (2013), SOCTA 2013, *EU Serious and Organised Crime Threat Assessment*, available at www.europol.europa.eu/content/eu-serious-and-organised-crime-threat-assessment-socta, accessed 11 September 2014.
4. The European Parliament Special Committee's Report on organised crime, corruption and money laundering: recommendations on action and initiatives to be taken, presented by Salvatore Iacolino.

- in selecting the most relevant areas where the Council of Europe could really play an essential role across a pan-European landscape, this White Paper concentrates on the criminal response. This does not mean that prevention was not considered a key factor, but in view of the information gathered, the group decided to focus on improving the criminal response in a transnational setting (e.g. detection, investigation, prosecution, evidence and recovery of assets);
- although the group identified numerous subjects in the field of TOC that could have been covered in its work, only five topics have been focused on in this White Paper to allow for precise recommendations for a future action plan: a) problems related to police and judicial international co-operation; b) the use of special investigation techniques (SITs); c) the implementation of witness protection programmes and collaboration of state witnesses; d) the need for increasing co-operation with administrative agencies as well as with the private sector; e) the essential need to target the proceeds of crime in order to discourage this type of criminality and to really improve the effectiveness of the fight against criminal organisations that operate in a transnational setting;
- the White Paper includes a list of recommendations based on the analysis of existing problems within the five key areas for improving the criminal response to TOC. It is not within the competence of this White Paper to lay out a concrete plan defining priorities and specific activities for the Council of Europe; rather, it makes recommendations proposing certain actions.

The involvement of the Council of Europe in developing a general strategy in the fight against TOC, as well as undertaking political and practical action in precise areas, would definitely contribute to the increased effectiveness of the fight against TOC. The Organisation is well placed to carry out political action to raise awareness of the need for a collective fight against TOC; ensure the updating and implementation of the existing conventions; and work in specialised networks to share intelligence. Furthermore, while there is no doubt that criminal response is a key tool in fighting TOC, the lack of comprehensive practical information stymies the improvement of criminal justice systems. We lack important information on where the criminal response is failing. To face this challenge, we have to know where the problems lie: how are SITs being used? How is remote computer access used? What is the reality of cross-border witness reallocation? How much do data protection laws hinder information sharing? Is the lack of mutual trust a real problem among Council of Europe member states? These topics need to be analysed at a practical level in order to define the measures to be applied.

Council of Europe monitoring bodies, with their longstanding experience and high specialisation in the different areas related to TOC, are capable of addressing the multidimensional fight against TOC in a pan-European context. But while specialisation is important, a common approach is advisable, as there is the risk that the fragmented results may not be used for a common assessment and action to fight TOC.

What follows is built on the solid foundation of the Council of Europe *acquis*.

Chapter 1

Introduction

1.1. THE COUNCIL OF EUROPE AND TRANSNATIONAL ORGANISED CRIME

TOC poses a direct threat to the internal security of all Council of Europe member states and contributes significantly to undermining the rule of law and compromising the integrity of democratic institutions. The Committee of Ministers has identified this criminal issue as one of the top priorities in the work programme of the Organisation for the years to come. Co-ordination of all actors is essential to efficiently fight TOC.

The first problem when addressing the issue of TOC is to agree on what is meant by the term, and organised crime itself.[5] For the purpose of the present document, we have adopted the definition of an "organised crime group" contained in Council of Europe Recommendation Rec(2001)11 concerning guiding principles on the fight against organised crime, which is the same as the one contained in the United Nations Convention against Transnational Organized Crime (UNTOC).[6] As for the notion of "transnational", we use the UNTOC definition.[7]

TOC poses a direct threat to the internal security of all Council of Europe member states. Because of its transnational character, this kind of crime typically cannot be efficiently suppressed by each state on its own. It requires a targeted and comprehensive approach, including the swift application of international co-operation mechanisms.

In response to the threat of TOC, European states have co-operated within the framework of various international and supranational fora. Many of these frameworks, for example the United Nations Office on Drugs and Crime (UNODC), the International Criminal Police Organization (ICPO, or Interpol) and the European Union (EU) institutions, have already proven their worth. However, despite the many instruments adopted in relation to TOC, a truly pan-European framework and a common strategic approach by all member states tackling TOC is arguably still lacking.

TOC contributes significantly to undermining the rule of law and compromising the integrity of democratic institutions. Taking into consideration the sophisticated tools and the violence used by criminal organisations to achieve their goals, TOC poses a serious threat to human beings as well as to the rule of law, and consequently to the values protected by the European Convention on Human Rights and, in general, by the Council of Europe. The negative impact on national economies cannot be overstated. Significant amounts of money are lost through tax evasion, money laundering and illegal economic markets, not to mention the indirect economic harm caused by organised crime as a criminal activity that can undermine the credibility and competitiveness of a state's financial and commercial sectors.

5. There are numerous definitions of "transnational organised crime", ranging from those that identify it with only mafia-type criminal organisations, to those that refer to any kind of criminal structure where more than three persons act in a co-ordinated way. The same applies with the meaning of "transnational".
6. Appendix to Recommendation Rec(2001)11: "organised crime group shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes, in order to obtain, directly or indirectly, a financial or material benefit".
7. Article 3: "(a) It is committed in more than one State;
(b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
(c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
(d) It is committed in one State but has substantial effects in another State."

At the same time, criminal organisations and individual criminals, from both within and outside Europe, have been moving through a steady progression, demonstrating their ability to forge alliances and operate across borders in all parts of Europe, thus further complicating detection work and subsequent criminal prosecution in individual member states.

Since 1958 the CDPC has contributed to the development of international criminal law, drafting a number of important legal instruments in the fight against TOC. Moreover, criminal law issues have recently been identified by the Committee of Ministers as one of the top priorities in the work programme of the Council of Europe for the years to come.[8]

Given the fact that some other international and supranational fora are already engaged in combating TOC, it could be argued that there is no need for the Council of Europe to engage specifically in this problem. However, this argument is unfounded: the fight against TOC is so complex that all efforts in combating it from all possible perspectives are needed. The Council of Europe, and in particular the CDPC, is uniquely placed and well established in the field of criminal law co-operation and can lead actions which contribute to and complement the activities of the aforementioned fora, acting as a bridge-builder, creating synergies with strategic partners and promoting co-operation across Europe. The Organisation's activities should be compatible and co-ordinated with those already developed and approved by the United Nations (UN) and the EU, to cite only two of the most important organisations actively involved in the fight against TOC.

In this field, as in many others, the co-ordination and distribution of tasks is essential in order to avoid overlapping components and activities that would render the end result inefficient. The lack of a comprehensive common strategy to prevent and combat TOC is manifested in the use of different approaches in determining the threats and risks of TOC and in the identification of possible "enemies" and the assessment of their capacities, which diminishes effectiveness in fighting them. TOC is moving much faster than the ability of states to react. This calls for a very efficient approach to be taken to combating TOC, with the setting of priorities which require the adoption of common standards and shared methods and practices to identify and fight TOC.

Council of Europe monitoring bodies, with their longstanding experience and high specialisation in the different areas related to TOC, are capable of addressing the many-faceted issues related to the fight against TOC in a pan-European context. These monitoring bodies not only contribute actively to the effective use and implementation of the Council of Europe conventions related to different types of TOC, but also prepare interesting reports that identify the flaws in practice and the need for future amendments to legal instruments. They also organise numerous events to collect information and raise awareness of the importance of compliance with the conventions in question. However, it appears that the expertise of these specialised committees could be further co-ordinated to define a common approach to TOC.

1.2. THE WHITE PAPER PROCESS

The Committee of Ministers approved on 21 November 2012 the setting up of an Ad hoc Drafting Group on Transnational Organised Crime (PC-GR-COT) to identify trends, problems and possible actions on TOC. This was to result in the preparation of a White Paper.

The threat of TOC is an increasingly important issue in many Council of Europe member states, and thus for the CDPC, with concerns on a number of different levels.

A roadmap setting out the work of the CDPC in the field of TOC was submitted to the CDPC in December 2011. A decision was taken to prepare draft terms of reference for a restricted drafting group of experts on TOC for approval by the CDPC and subsequently submission to the Committee of Ministers.

8. The programme line on antimoney laundering and the financing of terrorism (MONEYVAL), terrorism, cybercrime, trafficking in human beings (GRETA) and counterfeiting of medical products (MEDICRIME) develops an integrated approach and response to major threats to the rule of law building on the significant set of standards and follow-up mechanisms that it has developed over the years. In these areas, the Council of Europe will pursue its active partnerships with other international organisations including the UN, UNODC, OECD, FATF, EU, OSCE and OAS.

In March 2012, the Bureau of the CDPC approved the draft terms of reference and instructed the Secretariat to send them to all CDPC delegations for approval by written procedure and to submit them to the Committee of Ministers for adoption.

After lengthy negotiations, the terms of reference of the Ad hoc Drafting Group on Transnational Organised Crime (PC-GR-COT) were finally adopted by the Committee of Ministers on 21 November 2012.

1.2.1. Terms of reference

Following the terms of reference, the PC-GR-COT was to carry out the following tasks:

- the identification of relevant and emerging TOC issues which require a criminal law response;
- the development, in close co-ordination with strategic partners, of pan-European strategies, and where possible, common policies on preventing and combating TOC;
- the collection, assessment and exchange of best practices in the prevention of, and fight against, TOC from all Council of Europe member States;
- the preparation of a White Paper for consideration by the Committee of Ministers, after validation by CDPC, on selected trends and developments in TOC in the Council of Europe member States which may be considered as priority areas, focusing on developing an integrated strategic approach to combating TOC and identifying common responses to major threats to the rule of law and security of citizens.

In carrying out its tasks, the PC-GR-COT would consider the previous and current work carried out in this field by the relevant international and supranational organisations, notably the EU and the Council of Europe.

Once trends and developments in TOC in the Council of Europe member states were identified, the expected result was the preparation of a White Paper on selected key areas which may be considered as priority areas, focusing on identifying possible gaps in criminal law co-operation and providing recommendations as to possible action by the Council of Europe in this regard. The terms of reference required the PC-GR-COT to have completed its work by December 2013.

1.2.2. Composition of the group

The Ad hoc Drafting Group was composed of 12 representatives of member states of the highest possible rank in the field of TOC, criminal law and criminology, nominated by the CDPC, and one scientific expert, Mr Michael Levi (United Kingdom), with recognised expertise in the same field, appointed by the Secretary General. The group was chaired by Ms Lorena Bachmaier Winter (Spain), who was elected chairperson at the first meeting.

The group consisted of representatives from Azerbaijan, Bosnia and Herzegovina, Croatia, the Czech Republic, Denmark, Germany, Greece, Italy, the Russian Federation, Serbia, Spain and Turkey. All proved to have broad experience in the field of TOC, at an operational level (e.g. as public prosecutors, members of specialised law enforcement units), at academic level or at policy-making level.

Representatives from the following Council of Europe monitoring bodies (the Committee of Experts on the Evaluation of Anti-Money Laundering and the Financing of Terrorism, MONEYVAL;[9] the Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters, PC-OC;[10] the Committee of Experts on Terrorism, CODEXTER;[11] the Cybercrime Convention Committee, T-CY;[12]

9. MONEYVAL is an intergovernmental committee of a group of experts with the aim of ensuring that Council of Europe member states have in place effective systems to counter money laundering and terrorist financing and comply with the relevant international standards in these fields. See www.coe.int/moneyval, accessed 11 September 2014.
10. The PC-OC monitors all Council of Europe instruments in the field of international co-operation in criminal matters. It develops (negotiates) new binding and non-binding instruments, and its monitoring encompasses the development of practical tools based upon problems related to the application of the instruments or their interpretation. See www.coe.int/tcj, accessed 11 September 2014.
11. CODEXTER is an intergovernmental committee that co-ordinates the implementation of activities in priority areas within action against terrorism and follows up the implementation of Council of Europe instruments against terrorism. See www.coe.int/terrorism, accessed 11 September 2014.
12. The T-CY represents the States Parties to the Convention on Cybercrime to monitor the effective implementation of the convention. It seeks to exchange information on significant legal, policy or technological developments pertaining to cybercrime and the collection of evidence in electronic form. See www.coe.int/tcy, accessed 11 September 2014.

the Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs, Pompidou Group;[13] the Group of Experts on Action against Trafficking in Human Beings, GRETA;[14] the Group of States against corruption, GRECO),[15] as well as participants from Mexico, the EU and Interpol took part in the meetings at their own expense.

The participation of, for the most part, the chairpersons of the Council of Europe monitoring bodies as well as of the main international actors in the field of TOC indicated confidence that the Council of Europe, because of its normative foundation and its wealth of experience, was well placed to take on this timely initiative. Moreover, it generated a vast range of suggestions on the content of the White Paper itself.

1.2.3. Working methods

The first meeting of the Ad hoc Drafting Group was held in June 2013. It began with a *tour de table* of the main topics in each representative's country that had to be dealt with by the Ad hoc Drafting Group and which the representatives of the group had already submitted in writing to the Secretariat. The representatives of the different monitoring bodies of the Council of Europe presented the main activities carried out in their monitoring work, focusing on the transnational perspective of organised crime. Their input into the group's work was very much appreciated and considered essential in the identification of possible areas to be covered in the White Paper. The monitoring bodies also welcomed the added value of meeting together and working in such a multidisciplinary manner.

The Ad hoc Drafting Group considered good examples of judicial co-operation in criminal matters such as the European Judicial Network (EJN) and the Ibero-American Network for International Legal Cooperation (IberRED), which is a co-operation tool, for both civil and criminal matters, at the disposal of judicial operators from 22 Ibero-American countries (including Andorra, Portugal and Spain) and the Supreme Court of Puerto Rico.

The group identified and agreed upon the areas to be further developed in the White Paper, in particular mutual legal assistance and international co-operation in criminal matters; issues regarding the confiscation of the proceeds of TOC, as well as shortcomings in witness protection programmes; and the improvement of special investigative measures as well as the synergies between administrative authorities and law enforcement agencies.

A second meeting was held in December 2013, where the preliminary draft White Paper was presented. Each topic was examined and commented upon by the representatives of member states, taking into consideration the comments received by the CDPC during its 65th Plenary Session (2 to 5 December 2013), before transmission of the White Paper to the Committee of Ministers for adoption.

1.3. LEGISLATIVE AND POLICY ACTIVITIES RELATED TO ORGANISED CRIME AS A TRANSNATIONAL PHENOMENON

The drafting of new conventions or legal instruments on TOC should no longer be seen as a priority. Actions should focus on ratification, implementation and effectiveness of existing legal instruments.

The most severe forms of organised crime have a transnational dimension, either because they involve acts committed in different countries or perpetrators enjoying foreign connections and support, or because they involve foreign countries in the money-laundering process, through investments in foreign companies or real estate or through the use of fiscal havens to hide the proceeds of the crime. In order to address the problem of organised crime (and crimes related to it), and therefore the problems arising from its essentially transnational dimension, many instruments at international and European level have already been adopted including, *inter alia*, the UN, Council of Europe and EU documents mentioned in Appendix 1.

13. The Pompidou Group contributes to the development of multidisciplinary, effective and evidence-based drug policies in the member states, linking practice, science and policy focusing on the implementation of drug programmes. See www.coe.int/pompidou, accessed 11 September 2014.
14. GRETA monitors implementation of the Council of Europe Convention on Action against Trafficking in Human Beings. See www.coe.int/trafficking, accessed 11 September 2014.
15. GRECO monitors compliance with the Organisation's instruments and standards against corruption. See www.coe.int/greco, accessed 11 September 2014.

Looking at the legal instruments at international level, it is plain to see that this constitutes a constantly evolving arena of policy and action, but that policy alone may not always lead to changes in action "on the ground". It appears that the Council of Europe should no longer see the drafting of new conventions or legal instruments on the phenomenon of TOC as a priority. Despite the impressive number of legal instruments related to TOC, there are still problematic issues to be addressed as regards ratification, implementation and effectiveness of the legal instruments. The PC-GR-COT has highlighted several areas for this White Paper to address, which we will treat in the following chapters not in order of importance but in order of their role in the criminal process, from the identification and detection of crime to recovery of the proceeds of crime.

Chapter 2

Features, trends and developments in transnational organised crime

Three fundamental factors have influenced the expansion of TOC: the mobility of trafficked goods and persons, institutional and political developments, and most importantly, technological developments. Reliable figures and criminal statistics are needed to deal with the problem effectively. Identifying new trends is key, and may determine the need for action. Traditional key areas such as international drug trafficking, trafficking and the exploitation of persons, and financial crime remain the principal causes for concern.

2.1. DIFFICULTIES IN IDENTIFYING TRENDS IN TRANSNATIONAL ORGANISED CRIME

The notion of a trend in organised crime contains two elements which are separable in principle but often mixed up in practice. The first is the evolution of how criminals organise themselves and relate to each other – the "organised" bit. The second is the evolution of what sorts of crimes are being committed, to what extent, and with what social effects – that related to "crime" and "harm".

When describing apparent shifts in activities or forms of criminal association as changes or trends in organised crime, the difficult task is to allow for changes in our focus, in technology and in human sources, when recognising, tracking and evaluating what is changing. Sometimes things may seem worse only because we know more about what was happening than in the past, rather than because they have actually become worse. Our awareness of trends is only as good as the underpinning data, derived usually from policing intelligence but also sometimes from academic and civil society research. Therefore variations in intelligence efforts among Council of Europe member states and in the penetrability of their targets are a constraint that we should take into account.

Organised crime in Europe is normally understood as involving both predatory crimes (e.g. art and antiquities theft, trafficking in human beings, extortion, fraud, robbery and other violence) and consensual or transit crimes (e.g. some forms of corruption, migrants, drugs and money laundering).

Inadequate data exist as far as most of these offences are concerned, with large "dark figures" of unreported and undetected crimes. Despite the absence of precise figures covering the number, impact and costs of organised crime within the pan-European area, there is general recognition that, especially for illicit trade offences and other offences which are consensual or where the actual victim is not easy to determine, recorded crime or prosecution rates are more an index of police activity than a measure of the "objective" scope and scale of any crime problem. To identify trends relating to TOC we must try to combine official sources, academic sources and information derived from investigative journalism or other civil society sources.

The group considers the gathering of reliable and homogeneous data on TOC crimes at national level a priority: only on the basis of reliable figures and criminal statistics can such a complex phenomenon be efficiently addressed at political, judicial and law enforcement levels.

2.2. NEW TRENDS IDENTIFIED IN TRANSNATIONAL ORGANISED CRIME

Over the last few years we have witnessed the emergence of the following features (and dimensions) of modern crime: the transnational nature of criminal activities and their organisational dimension.

The former is due to three fundamental factors:

- the mobility of trafficked goods and persons: if in the past the interests of criminals were oriented towards immovable goods (in the field of agriculture, public contracts and construction), now there is increasing criminal interest in movable goods such as weapons, drugs, hazardous wastes, metals, various counterfeit goods and persons through trafficking in human beings or smuggling of migrants. The pursuit of these new criminal targets and their transfer from the country of origin or production to their final destination is a generating factor of this new dimension;
- institutional and political developments, particularly the abolition of the external borders of some specific areas and regions. A good example of this is the EU, where the abolition of its internal boundaries has facilitated the free movement of people, goods, capital and services, as well as criminals, illegal merchandise and services and illicit money;
- technological developments that allow and encourage swift communications, transactions and circulation, but also rapid transfer through money laundering of illicit money gained through crime (the proceeds of crime).

As for the organisational dimension, it is common knowledge now that criminals are becoming more affiliated with each other, since they recognise the added value of working together to carry out illegal activities. Of course, when we speak about the organisational dimension we are referring not to the simple situation in which more people are involved in carrying out a crime, playing a different role in order to reach the final illicit aim, but to a situation in which the group is not randomly set up but has a stable dimension, with a structure that is sometimes sophisticated and quite essential, in order to pursue a programme which goes beyond a single crime. This structure is instrumental in obtaining profits for the members of the group.

These new patterns of modern criminality can be easily discerned not only through practical experience, but also in the reports of law enforcement and judicial authorities, in data collected at national and international level, and from analysis available at EU level. SOCTA 2013, the strategic report of the European Police Office (Europol), is worth mentioning as it provides information to Europe's law enforcement community and decision makers about the threat of serious and organised crime to the EU that could also be relevant at Council of Europe level.[16] According to this source "serious and organised crime is an increasingly dynamic and complex phenomenon, and remains a significant threat to the safety and prosperity of the EU and of Third Countries". The key findings of this report show that traditional crime areas such as international drug trafficking remain a principal cause for concern. But they also highlight that the effects of globalisation in society and business have facilitated the emergence of significant new variations in criminal activity, in which criminal networks exploit legislative loopholes, the Internet and conditions associated with the economic crisis to generate illicit profits at low risk.

Informed by its analysis of the prevailing threat, SOCTA 2013 identifies a number of key priorities: facilitated illegal immigration, trafficking in human beings, synthetic drugs and poly-drug trafficking, missing trader intra-community fraud, the production and distribution of counterfeited goods, cybercrime and money laundering.[17]

Furthermore, SOCTA 2013 highlights the continuing evolution of an allegedly new breed of "network-style" organised crime groups, defined much less by their ethnicity or nationality than has been the case hitherto, and much more by their capacity to operate on an international basis, with multiple partners and in multiple crime areas and countries. The pyramidal structures have evolved to networks of cells with continuously changing partners and even locations. Europol states that this calls for a shift in the strategic response in the EU, away from one centred on individual ethnic types, or even individual crime areas, towards a more flexible, heterogeneous model of targeting these dynamic organised crime networks, through a more effective use of cross-border

16. The SOCTA is the cornerstone of the multi-annual policy cycle established by the EU in 2010, as a tool which ensures effective co-operation among national law enforcement agencies, EU institutions, EU agencies and other relevant partners in the fight against serious and organised crime. In identifying the new trends on TOC we have mainly used Europol's SOCTA 2013 assessment, as it is the most recent one and covers a considerable part of the geographical area of the Organisation.
17. Following SOCTA 2013 the Council of the EU set priorities for the fight against organised crime for 2014 to 2017. See the Draft Council Conclusions of 28 May 2013 (JAI 407, CRIMORG 151).

mechanisms to exchange information and co-ordinate operational activity. These could also be proposed for the Council of Europe and should be politically unproblematic for those member states that have ratified UNTOC.[18]

The analysis done by the EU institutions, although not totally applicable to the pan-European area, is useful to demonstrate the prevailing trends: at the end of the day, the phenomenon of TOC in the EU has clear and direct connections to the criminal organisations operating in the neighbouring states. The criminal organisations operating, for example, in drug trafficking in the EU are also active in many Council of Europe member states.

Thus it can be said that there are special features or different levels of impact of certain crimes in the EU, due especially to the elimination of interior borders within the Schengen area, but not different trends or a different type of emerging offence relevant when analysing TOC within the Council of Europe landscape.

There has been no forum or mechanism for gathering data on organised crime trends in all Council of Europe member states since 2005, when the last of the Council of Europe annual organised crime situation reports was published.[19] In the absence of a comprehensive study of the phenomenon in the Council of Europe region, the research that has been carried out within the EU might be used in the development of this White Paper.

It has also been suggested that a future Council of Europe action plan on TOC should not be too preoccupied with only focusing on emerging or new threats. Many of the threats are longstanding but are not being dealt with satisfactorily, and this is a sufficient basis for the launching of new initiatives. The lack of exact figures should not impede the identification of what is needed to fight TOC in a more efficient way, the challenges ahead and the type of action plan needed to overcome the present problems.

2.3. TRANSNATIONAL ORGANISED CRIME: KEY FEATURES AND RESPONSES

The main factors affecting the status of organised crime in a country are: globalisation, the country's economic situation, deficiencies in national law, society's attitude towards crime, technological changes, visa-free regimes, the customs union, and the capacities of law enforcement and judicial authorities. The current economic crisis and political circumstances (the Arab Spring) have had an impact on cross-border criminality in the Council of Europe region.

The key features of TOC are the following:

- every criminal act places a burden on society. But when it comes to TOC, which has the capacity to penetrate the economic and social fabric of society and poses a serious threat to individual rights and freedoms, the rule of law, the reliability of the financial system and democracy, the damage caused is much higher than that caused by any other type of crime;
- organised criminal groups have both local and cross-border dimensions, not only with regard to their composition and *modi operandi*, but also with regard to the activities they carry out and their consequences. Furthermore, these groups demonstrate a high capacity to adapt their criminal schemes and *modi operandi* quickly due to their flexibility;
- technological advancements not only facilitate TOC but also pave the way for new types of crime. For example, counter activities against online phishing, banking fraud, and cyber-attacks on information systems, databases and personal computers have become part of the daily work of law enforcement agencies;
- although terrorist groups and transnational organised criminal groups have different aims in the long run, the continuity of their criminal acts depends on their financial power. In particular, illegal drug trafficking stands out in the category of narco-terrorism due to the high financial gains it yields;
- groups of organised crime tend to specialise in providing particular services, even if they work in networks. These include drug importation, drug concealment, drug distribution, fraudulent documentation or racketeering;[20]

18. An interesting approach is mentioned in the Transnational Organized Crime Threat Assessment, elaborated by the UNODC in 2010. The document advises law enforcement authorities to direct more focus towards disrupting illegal markets (i.e. the sum of illegal activities carried out by various organised criminal groups, including trade in illegal merchandise and laundering money), rather than solely targeting organised criminal groups.
19. The PC-GR-COT Scientific Expert prepared the report on economic crimes in Europe, and also worked on the earlier ones. The reports, from 1996 to 2005, are available at www.coe.int/t/dghl/cooperation/economiccrime/organisedcrime, accessed 11 September 2014.
20. Kegö W. and Özkan C. (2010), "Countering transnational organized crime. Challenges and countermeasures", Stockholm Paper, Institute for Security & Development Policy, Stockholm, p. 7, available at www.isdp.eu/publications/index.php?option=com_jombib&task=showbib&id=5816, accessed 11 September 2014.

- some organised crime groups resemble criminal enterprises with a high degree of expertise, sophisticated structures and manpower while others are very flexible and simple;
- from the point of view of criminals, the type of goods they deal with is not so relevant. What motivates them is the capacity to undertake activities at the lowest risk of detection while generating the highest possible profits;
- the proceeds of crime obtained through criminal activities are the essential strength of criminal organisations. Criminal groups penetrate the legal economy in order to legitimise their proceeds and use legal entities as a shield and facilitator to carry out illegal activities. Nightlife, real estate, jewellery, exchange offices, the financial sector, tourism, casinos, procurement and construction are among the sectors vulnerable to infiltration by organised crime groups. By reinvesting illicit profits through legal economic means, these groups undermine legitimate commercial activities in a way that works against the free market and fair competition;
- criminal groups are supported by a wide range of professionals, for example lawyers, accountants, financial advisers, corrupt officials, judges, politicians and chemists. Without the support of these professionals, TOC would not succeed;
- corruption of the authorities by means of bribing or purchasing the services of public officials is a common feature of organised crime activities, used to gain impunity or infiltrate the legal economy and public institutions to make common illegal business: politicians, bureaucrats, members of the security and intelligence forces, army officers, managers in the financial sector, lawyers, solicitors, industrialists, bank employees, journalists and media owners or their family members and close relatives are the best targets for such practices. Generally this is a process in which each side looks after the other;
- fighting TOC is a process that needs a broader approach than that used to fight ordinary crime. This means that the matter has to be prioritised not only by lawmakers and public authorities but also the whole of society including non-governmental organisations, press and media organs, universities, trade unions and the private sector;
- in combating TOC, a preventive approach should be prioritised to minimise gaps and opportunities in the administrative, social and economic arenas, which could give criminal groups the possibility of exploiting unregulated or grey areas for their illegal aims. This approach also includes the promotion of good governance, transparency, accountability and professional ethics at all levels of the public service. Media and public support for the fight against corruption and organised crime is crucial;
- the preventive approach should include measures minimising the effect of organised crime, preventing its recurrence and protecting its victims. Article 31 and the following articles of UNTOC outline methods of prevention;
- a decisive response from the criminal justice system is essential. Specialised agencies and units, qualified manpower, technical capacity, budgetary resources and smart tools from criminal law should be emphasised;
- in criminal legislation, the definition of participation in an organised criminal group is not always consistent with the standards set by UNTOC. This hinders the application of criminal measures at a national level as well as co-operation with other countries in cases of organised crime.

Chapter 3

Identified key areas

Concentrating on precise problems to better define the Council of Europe's strategy and action plan on TOC seems necessary to foster efficiency and minimise risks of overlapping. The five areas selected (enhancing international co-operation; SITs; witness protection and incentives for co-operation; administrative synergies and co-operation with the private sector; recovery of assets) have been identified as crucial for the effective investigation and prosecution of TOC.

Taking into account TOC assessments and the information provided by the members of the group – as noted, most of whom had considerable experience in fighting TOC at an operative level – it may be concluded that there is a need for adequate implementation of (existing) legal instruments and more efficiency in investigation and co-ordination at a transnational level. Instead of making general statements on the need to fight TOC effectively, and in order to be more efficient, it was considered necessary to concentrate efforts on those areas essential to improving efficiency in combating TOC through criminal law. The group identified five areas to be addressed. All five areas are interconnected: if co-operation instruments do not work correctly, the fight at a transnational level is inefficient. This is why this point is considered crucial and has been addressed at length. For the recovery of assets and the detention of suspects, effective transnational investigation is needed, through the use of SITs not only at a national level, but also via international co-operation. Only with swift international co-operation and investigation, targeting the seizing of assets (the core element of these criminal business organisations), can TOC be kept within limits – complete eradication is only an ideal. For the sanctioning and incarceration of criminals and the dismantling of criminal organisations, insider co-operation and witness testimony is essential. In certain types of TOC, such as trafficking in human beings, the victims' testimony will only be obtained if they are sure of their future protection. This is why SITs, together with the protection of witnesses, are addressed in this White Paper.

Naturally, there are many other areas that should be covered in the fight against TOC: prevention, awareness, good governance, and in general the implementation of the rule of law are also crucial. Choosing only five key areas does not mean that the others are less important or should be neglected. But in order to make sensible and feasible proposals for a future Council of Europe strategy on TOC, the group decided to concentrate on criminal investigation and prosecution, and on concrete topics, so as to draft precise recommendations.

3.1. ENHANCING INTERNATIONAL CO-OPERATION THROUGH NETWORKS

Improving international co-operation in fighting TOC requires an adequate legal framework, its effective implementation and progress towards new models of closer co-operation. Ratification of conventions and legal instruments, as well as a review of reservations, is the first step. The second step, which lies in the execution of requests, and mechanisms and incentives, should be put in place to overcome delays and obstacles. Finally, in the fight against complex phenomena such as TOC, international networking co-operation at law-enforcement and judicial levels is crucial.

The investigation, prosecution and execution of sanctions regarding organised crime require efficient international co-operation.[21] Despite the availability of numerous wide-ranging instruments at intergovernmental or (sub)regional levels, international co-operation remains slow and laborious for the most part.

Generally, three basic conditions must be fulfilled for efficient co-operation at the international level. First, relevant international instruments should be available. Second, the domestic legal framework should be adequate. Third, networks have to be set up and used.

With regard to the third condition, it is clear that enhancing efficiency in the investigation of complex forms of TOC involves the setting up of judicial and police networks. This fosters swift co-operation, an understanding of the transnational dimension, co-ordination of interventions, the execution of requests, and also helps in overcoming the legal diversity among member states involved in a TOC investigation.

In subregional and interregional European, Eurasian and Euro-Atlantic specialised organisations, there are several police and judicial networks, following diverse patterns.[22]

The level of co-operation among these organisations depends on the degree of integration at political, economic and humanitarian level. Being integrated in a broader institutional association, such as, in particular, the EU, the Commonwealth of Independent States or the Ibero-American General Secretariat, obviously fosters a greater level of law enforcement and judicial co-operation.

Within the EU, which aims at creating a single space of freedom, security and justice – and therefore has very particular features not easily to be transferred to other countries – Eurojust, the EJN and Europol exemplify a step forward in dealing with transnational criminality. The experience of the EJN, Europol, Eurojust and the European Anti-Fraud Office (OLAF) show that many issues and obstacles concerning the judicial co-operation process can be resolved at an early stage of investigation through co-ordinating mechanisms, because, for instance, procedural standards and evidential requirements can be explained to all the parties involved and the proper letters rogatory prepared in advance.

At law enforcement level networking co-operation is also crucial. Interpol plays an essential role in this field and its global system of national central bureaus, which exist in over 190 countries, is an example of outstanding networking co-operation.[23] Interpol's system of notices and diffusions is a well-known mechanism to assist national law enforcement agencies with concrete aspects of specific investigations.[24] The well-recognised activity of the UNODC also covers the network-type of set up. The International Money Laundering Information Network (IMoLIN), an Internet-based network assisting governments, organisations and individuals in the fight against money laundering, has also recently been established.[25]

Another example of a UNODC network is CARICC (the Central Asian Regional Information and Coordination Centre for Combating the Illicit Trafficking of Narcotic Drugs, Psychotropic Substances and their Precursors). CARICC facilitates co-operation among all law enforcement agencies involved in countering illicit trafficking, including the police, drug control agencies, customs, border guards and special services. It introduces secure information exchange channels and agrees on multilateral international operations, including controlled deliveries.

Attempts to transfer progressive experience and best practices from one international jurisdiction to another already exist. In particular, the establishment of relations between Europol and so-called third countries

21. The term "international co-operation" is used since the White Paper wants to encompass all types and forms of international co-operation. By this we mean international police co-operation, international judicial co-operation and international administrative co-operation, the latter covering for instance co-operation among financial information units, tax authorities, social security and labour inspection authorities, immigration authorities and other administrative bodies.
22. See for example the EJN, the Genocide Network, Europol, the Police Cooperation Convention for Southeast Europe, IberRED, the Office for the Coordination of the Fight Against Organized Crime and Other Dangerous Types of Crime on the Territory of CIS Participant-States (BKBOP), the Organization for Democracy and Economic Development, the Virtual Law-Enforcement Center, and the Central Asian Regional Information and Coordination Centre for combating the illicit trafficking of narcotic drugs, psychotropic substances and their precursors (CARICC).
23. UNODC (2012), *Digest Of Organized Crime Cases. A compilation of cases with commentaries and lessons learned*, United Nations Office on Drugs and Crime, Vienna, pp. 70-71, 103-104.
24. The General Secretariat published approximately 26 500 notices and diffusions in 2011. There were 40 836 notices and 48 310 diffusions in circulation at the end of 2011, and 7 958 people were arrested on the basis of a notice or diffusion in 2011 (International Notices System – Interpol). Databases and networking in the field of firearms also provide a good example of networking in a special area: it is channelled through Interpol, the Interpol Firearms Reference Table, the Illicit Arms Records and tracing Management System and the Ballistic Information Network.
25. IMoLIN was developed with the co-operation of the world's leading anti-money laundering organisations. Included herein is a database on legislation and regulation throughout the world (Anti-Money Laundering International Database), an electronic library and a calendar of events in the anti-money laundering field.

(non-EU states), including countries both within Europe (Bosnia and Herzegovina, Russia, Turkey, etc.) and outside Europe (Canada, Colombia, USA, etc.) could be highlighted. Eurojust carries out a similar practice.

Without a proper legal framework, international co-operation is hampered or even impossible from the outset. The more states become party to these instruments, the more the network of legally binding connections expands and increases the possibilities for co-operation. Becoming a party to treaties and conventions is a first step. States can then do more and promote multilateral instruments to other states that are not yet parties. States can also look over the fence and join the multilateral instruments of other geographical entities or organisations and invite their counterparts to accede to Council of Europe instruments. All the conventions in the field of international co-operation in criminal matters are open to accession; some of them were set up as open instruments from the outset. An increasing number of non-European states have in fact "joined" the Council of Europe family by acceding to one or more conventions in the field of international co-operation in criminal matters. For instance, Chile and Korea have acceded to the European Convention on Mutual Legal Assistance in Criminal Matters and its Protocols. Brazil is set to accede to this instrument as well.

The Convention on Cybercrime,[26] signed in Budapest on 23 November 2001, is an example of a Council of Europe initiative to set up a network-type system in member states and even further afield. This convention, which is not only applicable to cybercrime but also to any international co-operation request which implies the use of ICT, provides in its Article 35 a 24/7 Network to hasten the process of providing assistance when this is needed quickly, for example for the preservation of computer data.[27] Following this provision almost all participating states have established contact points either within the national police service or the prosecutor's office or a hybrid of both. In this context, attention should also be paid to the "network of single points of contact" within the PC-OC. There are good reasons to explore and to recommend in the White Paper that this network be further developed, and inspiration could also be drawn from the EJN and IberRED.

Gaps and problems

In the legal field

According to the information received from PC-OC, several Council of Europe conventions have been signed, but not ratified. Another significant problem is that many states, at the moment of ratifying the conventions, have introduced certain reservations that might have been justified at that moment, but over the years have become outdated. Declarations and reservations require regular "maintenance" in order to keep the other parties properly informed about the (im)possibilities of co-operation.

However, as TOC is a global problem, there is also the need to co-operate with third countries. The signing of bilateral agreements with each of these countries not only increases the complexity of the legal framework – as every bilateral agreement might be quite different – but is also a cumbersome and slow process. A quick way to increase the network of conventional relations with other states is to accede to multilateral instruments that were negotiated by other intergovernmental organisations, as these instruments are open to accession by third states. For instance, accession to the mutual legal assistance convention of the Organization of American States[28]

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26. The main legal instruments on judicial co-operation elaborated within the Council of Europe are listed under Appendix 1.
27. Article 35 – 24/7 Network:
"1. Each Party shall designate a point of contact available on a twenty-four hour, seven-day-a-week basis, in order to ensure the provision of immediate assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence. Such assistance shall include facilitating, or, if permitted by its domestic law and practice, directly carrying out the following measures:
a. the provision of technical advice;
b. the preservation of data pursuant to Articles 29 and 30;
c. the collection of evidence, the provision of legal information, and locating of suspects.
2. a. A Party's point of contact shall have the capacity to carry out communications with the point of contact of another Party on an expedited basis.
b. If the point of contact designated by a Party is not part of that Party's authority or authorities responsible for international mutual assistance or extradition, the point of contact shall ensure that it is able to co-ordinate with such authority or authorities on an expedited basis.
3. Each Party shall ensure that trained and equipped personnel are available, in order to facilitate the operation of the network."
28. Inter-American Convention on Mutual Assistance in Criminal Matters, Nassau, 1992; Optional Protocol, Managua, 1993. Available at www.oas.org, accessed 12 September 2014.

allows legally binding procedures to be established with dozens of American states without their having to negotiate bilateral instruments with all these states individually. A simple accession saves time and money.

Finally, there is a last layer of laws: the domestic implementation of international instruments. A law on international co-operation in criminal matters is the hyphen between (ratified) international instruments and domestic criminal (procedure) law. This law is where the parties meet when they co-operate. The problem identified in practice is that despite the efforts towards harmonisation through international instruments, each state tends to implement conventions in a different way. The variety of laws operating according to different terms and conditions renders international co-operation more complex, and thus less attractive. Domestic legislation in this field should include consultations with other states and the inclusion of comparative law with a view to achieving the highest harmonisation possible.

In the execution of requests

If providing an adequate legal framework is a prerequisite for efficient international co-operation in criminal matters, it is only the first step. Practice shows that there are problems in the transfer and execution of requests, most commonly delays, mistrust, overloaded criminal justice systems, and a lack of adequate knowledge of the procedure and/or language.[29] The practitioners participating in the group confirmed this assessment unanimously.

Delays in the execution of requests are most often invoked by practitioners as a problem, together with state refusal to extradite nationals. These problems are created not by the lack of legal provisions, or a lack of ratification of the relevant conventions, but have to do with their legal and practical implementation.

With regard to delays, the requested authority often does not consider the compliance of the letter rogatory as a priority: in fact, the requested authority usually does not know much about the case at the point of origin of the request. Moreover, performance indicators usually do not prioritise the execution of mutual legal assistance requests. Therefore, such acts are only considered once national cases allow the competent authority to deal with foreign cases. A lack of awareness of the importance of swift co-operation is also to be seen in practice: requests for mutual legal assistance are still viewed as something that concerns the requesting state, and not the whole region. For example, some authorities still view mafia criminality as an Italian problem, tending to underestimate the capacity to act in a transnational setting. It should be made clear that in combating TOC every state profits, because TOC is an expansive phenomenon, and in the end affects every country in one way or another.

According to a document prepared by the Council of Europe,[30] the main problem is the duration of the mutual legal assistance process. The reasons for delays expressed in this study confirm the assessment made here, although with the particularities applied to the system of 24/7 contact points provided for in the Convention on Cybercrime.

If delays in the execution of judicial requests are a generalised problem, the refusal to extradite one's own nationals also requires attention. These grounds for refusal are based on the traditional role of the sovereign state to undertake to protect its own nationals. However, in a context of enhanced co-operation, each state should facilitate the extradition of alleged criminals so they can be brought to justice in the forum state. The reasons as to why these grounds for refusal are so often put forward are manifold, but probably relate to the lack of trust among member states with regard to their respective judicial and penitentiary systems.

In addition, analysis is needed on the role played by requests when investigating corporate criminal liability, and whether requests for measures and evidence relating to an incriminated legal person are accepted and executed in all Council of Europe states.

Against this backdrop, even if the aim does not go so far as to establish a single area of justice, as in the EU the need for mutual trust in order to improve mutual legal assistance is manifestly one of the areas in which the Council of Europe is working and has to continue working. A certain legal uniformity, guarantees in the

29. See Wade, M. (2011), "EuroNEEDS – Evaluating the need for and the needs of a European Criminal Justice System", Max Planck Institute for Foreign and International Criminal Law, Freiburg, available at www.mpicc.de/ww/en/pub/forschung/forschungsarbeit/strafrecht/euroneeds.htm, accessed 12 September 2014.

30. Council of Europe (2009). "The functioning of 24/7 points of contact for cybercrime", discussion paper, Economic Crime Division, Directorate General of Human Rights and Legal Affairs, Version 2 April 2009, Council of Europe, Strasbourg, available at www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/documents/567_24_7report4public_april09a.pdf, accessed 11 September 2014.

protection of human rights and an equivalent level of procedural rights and penitentiary conditions are pre-requisites for building mutual trust. The lack of political will and the lack of mutual trust play an important role in this context. It is clear that in areas where two or more states have a real willingness to co-operate, the co-operation works more efficiently. Improving the political will to boost co-operation in dealing with TOC should be one of the tasks of the Council of Europe.

Expanding, connecting, setting up networks

A major shortcoming characterising the current state of international co-operation in law enforcement is its geographical fragmentation: the fight against TOC requires a more co-ordinated and multi-state approach, because co-operation funnelled through single letters rogatory is not enough. On the basis of the experience of practitioners[31] it may be said that stimulating and improving co-ordination among the competent authorities of states dealing with investigations and prosecutions will be increasingly crucial in the coming years, in light of the developments in transnational criminality described above.

The complexity of these types of crimes and their transnational character requires the different authorities to be involved, together, from an early stage in the investigation and to continue such co-ordinated work up to the time of prosecution. In this context the setting up of a pan-European network of legal assistance in criminal matters (from Lisbon to Vladivostok), wherein all 47 member states of the Council of Europe could co-operate, should be further studied. The creation of such networks should be coherent with the existing frameworks, taking into account the bodies and the agencies already set up at regional level, avoiding duplication of efforts and sparing resources, and developing strategic and structural synergies with existing networks.

In sum, combating complex criminal organisations requires new models of networking co-operation.

If co-operation through networks is considered crucial, the next question is: what kind of model should be followed or adopted? Should a new judicial network play a major role in the pan-European context? Could the EU judicial network model be expanded to the Council of Europe landscape, or would connecting the existing networks be a solution worth exploring?

One of the possibilities would be to set up a central point within the Council of Europe landscape, institutionalised as a reference point, the action of which could be co-ordinated with the actions of other bodies like Eurojust and the EJN. This central point could also promote the stipulation of a memorandum of understanding among the competent authorities and might trigger the use of joint investigation teams (JITs) in certain areas of criminality for a more proactive investigative approach in investigations concerning TOC.[32]

The experience of the contact points network pursuant to the Convention on Cybercrime is a real example of this kind of co-operation under the auspices of the Council of Europe. The possibility of establishing a similar network (or networks) for co-operation among national law enforcement agencies to deal with other criminal offences related to TOC or expanding the existing cybercrime network to deal with TOC should be studied.[33] The setting up of JITs in complex cross-border investigations could also be part of the networking structures.

The other approach that should be studied is the possibility of connecting existing networks. The development of network co-operation could be based on agreements among currently existing networks, as is already happening in Europe. Europol, in this sense, has certain experience: it entered into strategic agreements with the UNODC and with the World Customs Organization, and it has an operating agreement with Interpol. Other regional organisations, for instance BKBOP, in accordance with Article 1.3 of the Regulations of the Bureau, may also establish and maintain working relationships with international police organisations.

However, one of the obstacles to expanding and connecting different regional law enforcement and judicial networks is the reluctance of many countries to share data and information, due to a lack of trust in the personal data protection legislation of the requesting state.

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31. Members of the EuroNEEDS study committee.
32. Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, available at: http://conventions.coe.int/Treaty/EN/Treaties/Html/182.htm, accessed 12 September 2014.
33. Competent authorities and points of contact for international co-operation, available at www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/Documents/Internationalcooperation/Res_internatcoop_authorities_en.asp, accessed 12 September 2014.

Possible actions

At the legal level

To enhance international co-operation on TOC through networks, stakeholders should:

- take political action to encourage member states party to Council of Europe conventions to make efforts to review and update declarations and if possible to eliminate reservations to the international conventions on co-operation in criminal matters and TOC;
- promote the accession to Council of Europe conventions of third countries, in particular those that are more affected by TOC, and promote agreements with relevant third countries;
- study the transposition of the conventions into the domestic legal framework, undertake action to reduce the number of grounds for refusal of execution of international judicial requests and consider the possibility of introducing legal deadlines for executing international co-operation requests;
- within the ambit of UNODC, there are several handbooks on the Internet that address the legal framework of international judicial co-operation. An analysis could be done on whether a co-ordinated approach to the elaboration of such handbooks would be useful, and if the updating and translating of such materials should be also done by the Council of Europe for its member states.

At the operational level

If the two main problems detected are the protracted process of executing requests for co-operation and a refusal to extradite nationals, the following actions could be considered:

- raise awareness not only of the problems of TOC, which are quite well known, but of the precise aspects of the need to co-operate. TOC is never a problem of a single state, it is like a very infectious disease: if common action is not taken in a co-ordinated way, the illness will spread and end up infecting everyone. This metaphor applied to TOC should lead to co-operation being considered as a priority in every state;
- gather the reports of the monitoring bodies, and publish the results on practical implementation of co-operation on TOC. On the basis of these results, propose legal changes and publish detailed reports specifically on the fight against TOC;
- analyse the grounds for the delayed execution of requests to see if it is due to a lack of knowledge, lack of political will, or lack of time and resources. Depending on the cause, different solutions to provide incentives for a swift and efficient response to the requesting authority should be developed. This could include more training, political action, incentives for judges and prioritisation of resource allocation;
- analyse the practical incidence and scope of co-operation with regard to legal persons incriminated for TOC activities;
- study the possibility of establishing fixed deadlines for the execution of requests, if not in conventions then through agreements or in domestic law;
- consider whether a solution can be found to overcome refusals to extradite based on the nationality of the alleged perpetrator, for example by entering into agreements on preventive custody and the transfer of the sentence being served to the state of the national, as conditions for extradition;
- build trust, underlining the importance of raising awareness of the need to co-operate and continue working in the area of protecting human rights. The scope for activity is so broad that concrete proposals are not put forward here, but the Council of Europe could perhaps start with projects of enhanced co-operation with regard to a certain type of offence, where all the member states share a high interest in co-operating and there are no political obstacles in promoting such co-operation;
- train law enforcement authorities, judges and prosecutors in fighting TOC, and providing mutual legal assistance. The use of ICTs in all types of crime, not just cybercrime, has increased significantly and especially in the field of TOC, for communication and for money laundering. The training has to be focused on SITs, the use of ICTs, preventive measures, international co-operation instruments and financial and business structures;
- provide specialised language courses for those involved in TOC. A common language is essential in fostering swift co-operation.

Through networks

Based on practical experience and on successful cases, the group considers that a good level of judicial co-operation in fighting TOC cannot be reached only by resorting to traditional schemes of international co-operation based on the execution of letters rogatory. The following actions are recommended:

- the Council of Europe should take political action to raise awareness of the fact that in the fight against TOC a new model of co-operation is needed: a more stable co-operation unit could be envisaged, with more frequent contacts among the specialised units dealing with the same type of crime;
- Recommendation Rec(2001)11 concerning guiding principles on the fight against organised crime, particularly with regard to the appointment of contact points at a national level, should be fully transposed and institutionalised. Such contact points could play a key role at Council of Europe level in improving international co-operation. A judicial network at Council of Europe level (COEJN) is strongly recommended, for example by establishing an institutionalised connection between Eurojust and the network of judicial co-operation in Council of Europe member states;
- the Organisation should explore the possibilities for encouraging the setting up of JITs in transnational criminal investigations in the pan-European landscape;
- the Organisation should promote the expansion or setting up of contact points with relevant experience in fighting TOC, for assisting in the transfer and execution of requests and co-ordinating and sharing operational and investigative information with the members of the TOC network, with the aim of taking a proactive approach to TOC.

3.2. SPECIAL INVESTIGATIVE TECHNIQUES

While it is clear that to detect and prosecute TOC these SITs are indispensable, their use has to be counterbalanced with adequate measures that guarantee the protection of human rights. Practice shows that Council of Europe member states make wide use of SITs in investigating TOC, but SITs are not always adequately regulated, in particular with regard to electronic evidence. The lack of precise rules and legal harmonisation poses difficulties to the cross-border transfer of evidence.

Organised criminal groups take many counter measures while carrying out or preparing their criminal activities in order not to attract the attention of law enforcement agencies. Traditional methods of investigation are often inadequate because of the special structures and professionalism of organised criminal groups. SITs are therefore applied to penetrate such criminal groups.

To gather intelligence and information about the activities of a criminal group, it is necessary to resort to SITs based on operational needs. SITs include controlled deliveries; covert investigations; interception of communications (wire-tapping); bugging of premises; covert surveillance; covert storefront operations which appear to offer opportunities for crime; and undercover agents and informants.

At international level, Article 20 of UNTOC (2000) encourages the use of SITs, mentioning expressly controlled delivery, the use of electronic surveillance measures and undercover operations among other measures. Article 7 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198, 2005) also encourages the use of SITs. The Convention on Cybercrime envisages strong and fast co-operation to investigate cybercrime among states parties (Articles 29 to 34).[34] Furthermore, GRETA has regularly emphasised the importance of using SITs to comply with the obligation to conduct effective investigations on trafficking in human beings, as mentioned in Article 1.1.b of the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005). Best practices in the use of SITs are also defined in numerous international documents.

Although the conventions underline the relevance of using SITs to combat TOC, precise rules regarding the use of SITs in criminal investigations are to be found in domestic law: each country regulates them according to their own assessment of the risks for security, and their own appreciation of the proportionality principle.

34. Some states have claimed that the Budapest Convention is outdated and contains certain contradictions. According to the UNODC draft comprehensive study on cybercrime (not yet adopted), some states have recommended the development of a new international legal instrument to combat the use of ICTs for criminal purposes.

Despite the significant contributions of the European Court of Human Rights, we have to point out that in the field of criminal investigative measures and the protection of fundamental rights (mainly the right to privacy) we are still very far from reaching a common standard or a uniform understanding on the limits of these measures: proportionality is still a notion to be defined. The Court has focused primarily and almost exclusively on the legality requirement, skipping the issue of the limits of intrusive investigative measures. To date, there are no specific guidelines to define the right balance between the interests of a criminal investigation and the protection of the rights of citizens, and therefore there is no common understanding of what the principle of proportionality is.

This might be the most sensible policy for the Court, not only because we lack universally accepted standards to measure the necessity of limitations on human rights and especially on privacy, but also in order not to place too much stress on its own existence. But the logical consequence is a lack of legal harmonisation among the Organisation's member states, and great disparities in the level of intrusiveness considered acceptable when resorting to SITs within a criminal investigation across countries. This represents an obstacle in the transfer and circulation of evidence, as well as in its admissibility before the court of the forum state.

Gaps and problems

The practice in Council of Europe member states shows that they make wide use of SITs in investigating crime. But many do not have an adequate legal framework regulating SITs, especially those regarding the use of ICTs. Searches of computers are often made under the general rules of search and seizure, something that is not always adequate, as for example happens with remote access to computer networks. Remote access to computer hard drives using Trojan or other hacking software programmes is highly controversial, as it may be used beyond borders, raising problematic issues of jurisdiction and sovereignty.

A further problem arises with regard to data mining, as many legal systems consider that it amounts to street surveillance, if the data are open-source, while other countries consider that it infringes privacy, and judicial control is required.

The obligations of service provider companies with regard to the storing of data and access by law enforcement authorities are also inconsistently regulated by much domestic law within the Council of Europe landscape. While some countries allow access to the Internet Protocol address of a user without a judicial warrant, others allow access to all the envelope data or meta data, or require a judicial order to authorise the service provider to transfer the data of their clients to law enforcement authorities.

This lack of comprehensive regulation and/or the differences existing across the domestic law of Council of Europe member states obviously increases the difficulties in transnational co-operation and the transfer of evidence. The differences in the regulation of certain investigative techniques may hamper their use in a cross-border setting.

For example, conducting covert investigations and controlled deliveries in the territory of another state is challenging because of differences in laws, law enforcement systems and institutional priorities. Frequently, undercover agents who take part in TOC investigations need to move to the countries where the targeted criminal group has links, but legal barriers and the absence of clear regulations on JITs or operations render the execution of such transnational investigative measures unfeasible or difficult.

However, the fight against TOC needs to take a proactive investigative approach. TOCs are hardly ever reported to the police, because in the majority of cases – with the exception of human trafficking – there is no clear victim to be identified. All the persons involved in the criminal activity are interested in concealing information and in keeping the crime undetected. This is why the traditional approach of waiting for a crime to be reported or looking for evidence of an already committed crime in order to initiate a criminal investigation does not work when fighting organised crime. A proactive approach – gathering information, analysing information, matching data – is usually required not only to discover the criminal activity, but also to understand the totality of the criminal market where it operates.

To this end, most countries have set up intelligence units to deal with information on complex serious organised criminality. These intelligence units, as law enforcement units with the task of building up information positions, have to be differentiated from traditional secret intelligence services dealing with issues of state security. However, this distinction is often not clear in all legal systems.

Finally, while there is general agreement that the fight against TOC needs a proactive approach, the laws usually do not define the kinds of coercive measures a law enforcement unit can use as part of preventive

action or intelligence gathering. This may hinder the effective prevention and investigation of TOC, but it may also pose risks to the fundamental rights of individuals, as has been highlighted in the media recently with regard to the activities of certain national security agencies.

Possible actions

There are two parallel sets of actions that could be taken with regard to the fight against TOC and the use of SITs: 1. enhancing the regulation and efficient use of such techniques and acquiring comprehensive knowledge of the existing legislation in Council of Europe member states; 2. strengthening human rights protection when resorting to these intrusive investigative measures. While it is clear that to detect and prosecute TOC these SITs are indispensable, their use has to be counterbalanced with adequate measures that guarantee the protection of human rights and prevent abuse.

With regard to the first perspective, and in line with UNTOC, the Council of Europe could undertake the following actions:

- ensure that there are sufficient training programmes provided to enhance the professional skills of law enforcement agencies, prosecutors and judges in applying SITs and ICTs. A first step could be to ensure that in every member state there is a unit with adequate training to deal with SITs with regard to TOC;
- scientific and comparative research within the Council of Europe landscape should be carried out to collect all existing rules at national level and create a handbook of the measures available and the legal regimes behind them. Such information should be posted on an updated and adequately disseminated webpage;
- ensure that ICT use in criminal investigations is adequately regulated, in particular with regard to remote access to computer networks, where the application of the general rules on search and seizure are clearly not adequate;
- ensure that legal systems distinguish between actions carried out to build up information positions (preventive intelligence) and actions to gather evidence for prosecution;
- there is a need to evaluate the efficiency of these measures and the level of legal harmonisation among member states. Such a study could start with a single measure, for example online searches. It should pay special attention to the conditions for allowing SITs and consider whether the rules governing the gathering, processing, analysing and storing of relevant data are clearly defined by law and also applied in practice, and also if measures for the protection of human rights in a transnational investigation exist, in particular with regard to data protection and privacy;
- undertake a study on the problems encountered in the use of SITs at a transnational level, and consider if such problems could be better overcome with JITs, single agreements or by setting general guidelines;
- undertake a study on problems regarding the admissibility of evidence in forum states, and the protection of defendants' rights against investigative acts carried out in a foreign country under different rules. SITs are relevant in order to combat any kind of serious crime, with regard to transnational proceedings and investigations;
- in the view of the group, the Council of Europe shall play a key role in defining the principles of transnational criminal proceedings to strengthen defendants' rights in such proceedings, while promoting investigative efficiency. The role of the European Court of Human Rights has been decisive in establishing common standards on human rights, but there is still a need to set clear rules on the rights of defendants in transnational inquiries.

3.3. WITNESS PROTECTION AND INCENTIVES FOR CO-OPERATION

Witness/state witness protection programmes

Legal instruments and mechanisms providing protection to witnesses in the fight against TOC are in place. There is a need to find out why the witness programmes do not work as efficiently as they should in the realm of TOC. The Council of Europe should take action in analysing the real impact of witness evidence in combating TOC, the number and quality of witness protection programmes, and the shortcomings detected in their implementation.

Witnesses may play a crucial role in the investigation, prosecution and adjudication of TOC. A range of procedural and non-procedural protection measures is considered necessary to ensure that witnesses can testify freely and without intimidation, and that their lives and those of their relatives and other persons close to them are protected before, during and after trials.

Protection by law and the relevant institutions is a basic human right in the course of criminal proceedings. Indeed, considering that it is obligatory for a person in the capacity of a witness to provide testimony before court, states are obliged to provide witnesses with the protection of all human rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5).

Furthermore, Article 24 of UNTOC obliges all states parties to "take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them". Article 26 of the convention also urges states parties to "take appropriate measures to encourage persons who participate or who have participated in organized criminal groups" to supply information useful to competent authorities for investigative and evidentiary purposes.

The question of protection for witnesses and persons collaborating with the judicial authorities has already been dealt with by the Council of Europe in Recommendation No. R (1997) 13 of the Committee of Ministers to member states concerning intimidation of witnesses and the rights of the defence, adopted on 10 September 1997. The recommendation establishes a set of principles as guidance for national law on witness protection whether in the code of criminal procedure or with out-of-court protection measures.

The recommendation offers member states a list of measures which could effectively help protect the interests both of witnesses and of the criminal justice system, while guaranteeing the defence appropriate opportunities for the exercise of rights during criminal proceedings.

The Committee of Ministers adopted its Recommendation Rec(2001)11 concerning guiding principles on the fight against organised crime on 19 September 2001 at the 765th meeting of the Ministers' Deputies. According to this recommendation, member states are urged to provide effective, physical and other, protection for witnesses and collaborators of justice who require such protection because they have given or agreed to provide information or give testimony or other evidence in relation to organised crime. Similarly, such protection measures should be available for those who participate in or have agreed to participate in the investigation or the prosecution of organised crime as well as for the relatives and associates of the individuals who require protection.

Furthermore, Article 28 of the Council of Europe Convention on Action against Trafficking in Human Beings stipulates that countries "shall adopt such legislative or other measures as may be necessary to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators". According to the explanatory report of the convention the expression "effective and appropriate protection", refers to the need to adapt the level of protection to the threat to the victims, collaborators with the judicial authorities, witnesses, informers and, when necessary, the members of such persons' families. The measures required will depend on the assessment of the risks such persons run. In some cases, for example, it is sufficient to install preventive technical equipment, agree upon an alert procedure, record incoming and outgoing telephone calls or provide a confidential telephone number, a protected car registration number or a mobile phone for emergency calls. Other cases will require bodyguards or, in extreme circumstances, witness protection measures such as a change of identity, employment and place of residence.

The Criminal Law Convention on Corruption of the Council of Europe (ETS No. 173) (Article 22) requires states parties to adopt such measures as may be necessary to provide effective and appropriate protection for those who report corruption or provide testimony about it before court.

The Committee of Ministers adopted Recommendation Rec(2005)9 on the protection of witnesses and collaborators of justice at the 924th meeting of the Ministers' Deputies held on 20 April 2005. This recommendation includes definitions of relevant concepts that should aid in harmonising national laws.[35]

35. Rec(2005)9 defines the terms "witness" to mean "any person who possesses information relevant to criminal proceedings about which he/she has given and /or is able to give testimony (irrespective of his/her status and of the direct or indirect, oral or written form of the testimony, in accordance with national low), who is not included in the definition of "collaborator of justice". The Council of Europe defines the term "intimidation" for the purpose of witness protection: "any direct or indirect threat carried out or likely to be carried out to a witness or collaborator of justice, which may lead to interference with his/her willingness to give testimony free from undue interference, or which is a consequence of his/her testimony".

Gaps and problems

From the perspective of the practitioners, there are enough international legal instruments dealing with witness protection and highlighting their importance in fighting TOC. The drawbacks are rather to be found in the practical implementation of the witness protection programmes. This is why, in spite of the existence of exchange programmes, platforms and Recommendation Rec(2005)9, it is important to evaluate whether these tools are properly implemented. However, there are no updated published studies that enable us to do this in a pan-European context and exact figures on the number of convictions obtained on the basis of statements made by protected witnesses are not available.

The possibility of counting on the contributions of witnesses is of paramount importance for the judicial authorities, because sometimes this is the only tool available to uncover the secrets and structures of criminal groups. The experience of member states such as Italy (as shown by the statistics) has been decisive in the consideration of the successful protection of witness and suspects, whose co-operation has been a key factor in the final success of investigations against organised crime groups. The above-mentioned considerations are sufficient reason to envisage appropriate policy in this regard with strategic relevance at a pan-European level.

In many countries, witness protection is largely seen as a police function, whereas in others, judges and a range of government departments play a key role.[36] The Council of Europe (2004) study of best practices concluded that it is important to separate the staffing and organisation of witness protection agencies from investigative and prosecutorial units. This is necessary in order to ensure the objectivity of witness protection measures and to protect the rights of witnesses. A later review of existing programmes in Europe identified three necessary characteristics of agencies charged with implementing witness protection:

- they must co-operate very closely with law enforcement agencies, using well-defined protocols;
- those responsible for witness protection should operate independently of the other elements of the organisation to protect the confidentiality of the measures taken to protect a witness;
- the staff dealing with the implementation of the protective measures should not be involved in the investigation or in the preparation of the case for which the witness is to give evidence.

Assessments should therefore be conducted periodically and their results should be shared with the witnesses so that they have a realistic understanding of the dangers they potentially face, without invalidating their feelings of fear and anxiety. The UN asserts that enabling legislation should make it a criminal offence to divulge protected information related to such programmes or the witnesses.

All individuals involved must voluntarily agree to enter a programme, because protected witnesses must play an active role in ensuring their own safety and preventing harm to themselves and persons close to them. Once an individual is accepted, a "protection plan" is developed to put in place a number of measures commensurate with the level of threat and the various people involved (witnesses and people close to them). However, in the Council of Europe context, no legal rights arise from protection contracts nor do those on the programme receive a copy of the contract, for security reasons.[37]

Procedural measures – for example recognising pre-trial statements – should be used to reduce the risk faced by witnesses. In many European countries, pre-trial statements given by witnesses and collaborators of justice are recognised as valid evidence in court, provided that the parties have the opportunity to participate in their cross-examination. In a system where pre-trial statements of witnesses or testimonies of anonymous witnesses are generally regarded as valid evidence during proceedings, these procedures reduce the risk to witnesses except from revenge attacks. International co-operation in this area is very important, since many member states are too small to guarantee safety for witnesses at risk who are relocated within their borders.

The European Parliament's report on organised crime of September 2013, already cited, shows great divergences in the regulation and the implementation of witness protection programmes among EU member states, as

36. See "Witness Protection as a key tool in addressing serious and organized crime", a paper by Karen Kramer, Senior Expert, Division for Treaty Affairs, UNODC, available at www.unafei.or.jp/english/pdf/PDF_GG4_Seminar/Fourth_GGSeminar_P3-19.pdf, accessed 12 September 2014.

37. On average, the minimum length of witness participation in a protection programme was two years and the average duration was between three and five years in the best practices study. The general principle is that a protected witness should be enabled to live a normal life as much and as soon as possible. After that, the agency will let participants leave the programme and take care of themselves again, as soon as this can be done safely. The UN review asserts that experience has shown that even after the end of the formal protection programme, some form of care must still be provided, because the threat against the person rarely disappears completely.

well as the use that their criminal justice systems make of them, as the statistics show. It also recommends introducing "standard pan-European rules on the protection of witnesses, informers and those who cooperate with the courts".[38]

Possible actions

It is obvious that member states take differing approaches to witness protection programmes. The question is whether these different approaches generate problems at an international level when it comes to co-operation on witness protection. The Council of Europe should analyse this issue and try to find out why witness programmes do not work as efficiently as they should in the realm of TOC. It appears that the mechanisms exist, but there are potential problems in providing resources for locating witnesses under protection abroad. The Council of Europe should take action to analyse the real impact of witness evidence in combating TOC, the number and quality of witness protection programmes, and the shortcomings detected in their implementation. Such a study should include the following issues:

- evaluation of the implementation of Recommendation Rec(2005)9 on the protection of witnesses and collaborators of justice;
- the necessity of creating a separate legal regime, with different features, for the protection of witnesses and the protection of state witnesses (members of criminal groups who have decided to co-operate with justice);
- the rights of witnesses in witness protection programmes in the country in question and abroad (in case of relocation);
- protection of personal data and the possibility of using new or false identities;
- institutional capacities to protect witnesses/special witness protection units (including operational independence, financial independence and human resources specialisation);
- types of protection measures;
- the use of ICTs in witness cross-examination and the evidentiary value of such recorded witness statements, as well as anonymous witnesses' statements;
- the legal possibility of relocation of witnesses abroad;
- the existence of formal programmes in each member state, including whether any of them operate cross-border;
- data about success rates both at the time of giving evidence and afterwards, and cross-border learning about problems and their resolution.

Incentives for the co-operation of co-defendants

The co-operation of insiders is crucial in investigating and combating TOC. The establishment of incentives for the co-operation of co-offenders is a controversial issue, although a number of international legal instruments require the states to take measures to encourage such co-operation. A study and assessment of those measures – plea agreements, mitigated punishment, etc. – within Council of Europe member states is necessary.

Co-defendants are very often important witnesses in proceedings related to TOC. The previous section has addressed the need to analyse witness protection in general, including that of co-defendants. However, for co-defendants, who are mostly members of the organised criminal group in question, to take the step of collaborating with the authorities in investigating, prosecuting and sanctioning the said group's alleged crimes, the offer of protection is not incentive enough. Criminal groups have to be combated with help from insiders, and to this end, the possibility of giving them a mitigated sentence, entering into an agreement with them, or even granting immunity might be considered exceptionally. The importance of this highly controversial approach justifies a separate analysis of such incentives for co-defendants.

A central issue in the goal of investigating and combating TOC, as well as foiling planned criminal operations, is the provision of adequate incentives for the co-operation of persons who are themselves, directly or

38. See paragraph 125, xviii.

indirectly, participants in criminal acts and thus subject (potentially) to prosecution (so-called "collaborators of justice").[39] Such insiders sometimes possess invaluable knowledge about the structure, method of operation and activities of the criminal organisations with which they are affiliated, as well as their links with other local or foreign groups.

A number of international instruments require that states parties take measures, in accordance with their fundamental legal principles, to encourage the co-operation of this special category of witnesses with law enforcement authorities. These instruments include UNTOC (Article 26) and the UN Convention against Corruption (UNCAC, Article 37), which have an impact on all Council of Europe member states, as well as the more restrictive EU Council Resolution of 20 December 1996 on individuals who co-operate with the judicial process in the fight against international organised crime, and EU Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (Article 4).

States parties to the above instruments are obliged (or at least urged in the case of the EU Framework Decision) not only to ensure that collaborating offenders enjoy *mutatis mutandis* protection from retaliation and intimidation granted to other witnesses – as foreseen also in Recommendation Rec(2005)9 of the Committee of Ministers to member states on the protection of witnesses and collaborators of justice[40] but also to provide concrete motives and inducements to offenders to attain their co-operation in supplying information useful for investigatory and evidentiary purposes (e.g. the identity, nature, composition, structure, location or activities of organised criminal groups, international links with other groups, offences committed or about to be committed), in order to deprive organised criminal groups of their resources and the proceeds of crime, and to recover such proceeds.

Gaps and problems

So far, the nature of such incentives and the possible steps to be taken for their introduction have been left to the discretion of the countries involved. Among conceivable measures to combat TOC, states parties are encouraged in particular to provide for the possibility of mitigating punishment or granting immunity from prosecution to persons providing substantial co-operation in the investigation or prosecution of a related offence, not only in a domestic, but also in a transnational context.

Indeed, some states have sought to promote the co-operation of offenders through the granting of immunity from prosecution or comparative lenience, under certain conditions. In several Council of Europe member states, however, there are no explicit policies or adequate legal provisions in place.

With regard to mitigated punishments, most states parties have measures of a generic nature in place (usually to be found in their criminal codes), permitting collaboration to be considered as a circumstance mitigating criminal liability and taken into account by the court during sentencing, that is at the stage of determining the perpetrator's individual punishment: no assurances are provided to the co-operating defendant in advance. Acts of collaboration which may lead to a mitigated treatment normally include active co-operation towards the detection of a criminal group, pleading guilty, exposing other accomplices, and also rendering assistance in the investigation and the recovery of criminal proceeds. The extent to which a lighter sentence is imposed depends, usually, on the degree of co-operation of the particular defendant and the effect he/she has in reducing the harm caused by the offence, and is left to the discretion of the court. Naturally, the possibility of mitigating a sentence may be linked not only to the degree of co-operation, but also to the seriousness of the crime and the guilt of the accused person. Therefore, mitigation of punishment may be excluded in the case of a major organised crime offence and substantially wrongful behaviour of the co-operating person.

Since this is a general principle of sentencing, there are normally no guidelines or uniform criteria in this regard – every case is dealt with on its own merit.

Such generic provisions cannot always be considered sufficient for the purposes of combating TOC. Therefore, it may be useful to consider ways to expand the scope of domestic legislation, streamline the applicable procedures and adopt specific provisions aimed at subverting the loyalty of offenders to organised criminal groups. Such provisions may include various forms of plea bargaining, pre-judicial co-operation agreements

39. See also UNODC (2008), *Good practices for the protection of witnesses in criminal proceedings involving organized crime*, United Nations Office on Drug and Crime, New York, p. 19.

40. See also Recommendation No. R (1997) 13 of the Committee of Ministers concerning intimidation of witnesses and the rights of the defence of 10 September 1997, and Article 22.a of the Council of Europe Criminal Law Convention on Corruption of 1999. It is worth mentioning that the rule among Council of Europe states appears to be that national systems do not foresee or keep records of protection measures applied separately for collaborators of justice.

and summary prosecutions, as already used or being developed by a number of Council of Europe member states (e.g. Azerbaijan, Estonia, Switzerland, the UK).

With regard to granting immunity from prosecution (or to refraining from imposing punishment) to accused collaborators, several Council of Europe member states appear not to have established such a possibility for organised crime offences (e.g. Bulgaria, Finland, Switzerland), despite the fact that the international instruments mentioned above advocate that this possibility should be considered. Such measures, if advisable in a certain legal context, should be accompanied with precautions to curb possible abuse, such as providing for some form of judicial review to ratify the terms of immunity arrangements and issuing precise guidelines for exercising the available discretion and protecting the rights of the accused. For example, states should ensure that a conviction for belonging to a criminal organisation or for crimes committed by such an organisation is not based solely on the statements of a collaborating co-defendant.[41]

Finally, it is important that the measures described above also function in a transnational context, given the widely transnational character of organised criminal activity. Significantly, both Article 26 paragraph 5 of UNTOC and Article 37 paragraph 5 of UNCAC urge states parties to consider entering into agreements concerning the potential provision of preferential treatment by the competent authorities of one state to a co-operating person located in another. For instance, if a member state, within its jurisdiction and national regulations, has granted special treatment to a member of a criminal organisation or to the perpetrator of a crime committed in an organised form, then an assessment should be made as to whether the same treatment could also be considered valid in the courts of other member states.[42] Nevertheless, Council of Europe member states – with few exceptions (e.g. a treaty is reported to be in place between the Baltic states) – appear not to have entered into arrangements of this kind.

Possible actions

Based on the above findings, it appears necessary to undertake a more thorough study of the status of implementation of the above-mentioned provisions among Council of Europe member states, as well as an assessment of the various measures which could promote the co-operation of organised crime offenders with law enforcement authorities, with a focus on:

- the various forms of plea bargaining, if they exist, and evaluating their compatibility with national policies on fighting organised crime and pre-judicial co-operation agreements that may result in a mitigated punishment or in the dismissal of the case against the collaborator;
- the establishment of agreements or other arrangements among member states for the transnational application of such measures.

As a further step, a recommendation or even binding provisions may be envisaged, that would stress the importance of effective, harmonised measures in this field, and urge their adoption by member states.

3.4. ADMINISTRATIVE SYNERGIES AND CO-OPERATION WITH THE PRIVATE SECTOR

With the advances in ICTs, administrative synergies emerge as a necessary and cost-efficient extension of the powers to counter TOC: active co-operation and exchange of information of law enforcement authorities with administrative bodies and private entities has to be promoted, including at a transnational level, within an adequate legal framework that respects data protection and privacy rights.

By administrative synergies we understand the various forms of co-operation of law enforcement authorities with administrative authorities and private entities. This is a key issue with regard to efficient (preventive) co-ordinated action against TOC, as administrative authorities can play an important role in identifying, but also in deterring, organised criminal groups that infiltrate state and private legal activities for the purpose of committing crimes, laundering money and organising frameworks for concealing the financing of crime.

41. See European Court of Human Rights, *Verhoek v. The Netherlands*, Decision as to the admissibility of Appl. No. 54445/00, 27 January 2004.
42. See also EU Council Resolution of 20 December 1996 on individuals who co-operate with the judicial process in the fight against international organised crime, paragraph D.

Although the practice of including administrative authorities and private entities in fighting organised crime has been around for several decades (e.g. in the United States), in Europe it is a relatively new phenomenon, dating back to no more than five years. Despite this, administrative synergies are, in some form or another, present in most Council of Europe member states, where law enforcement authorities are able to pool information from a variety of administrative authorities and private entities.

As organised criminals take advantage of the advances in ICTs and become ever defter in their methods, and with law enforcement authorities increasingly in need of additional resources, administrative synergies emerge as a natural and cost-efficient extension of the powers that counter organised crime.

Co-operation between law enforcement authorities and other bodies is generally encouraged in all documents pertaining to organised crime. UNTOC stresses the importance of co-operation between law enforcement authorities and other bodies in several instances (most notably in Article 1, Article 7.4 and Article 31.2(a)). The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Financing of Terrorism (2005) provides for the setting up of financial intelligence units and co-operation between them at an international level. This convention encourages co-operation among different authorities, albeit without explicitly stating the need for co-operation between law enforcement authorities and other actors. It does so in the Convention on Mutual Administrative Assistance in Tax Matters, developed in concert with the Organisation for Economic Co-operation and Development (OECD), which lays down the ground rules for co-operation and exchange of information in the field of taxes. It should also be recalled that the Council of Europe convention on human trafficking provides a legal basis for co-operation and synergies between state bodies and private entities.[43] However, the legal provisions governing the possibility of law enforcement authorities mining administrative authorities and private entities for information differ from country to country. Even though the formulation of universal guidelines in this area would not be advisable at the present time (due to differing national legal systems), it is commendable that several international bodies have taken note of the importance of administrative synergies and continue to encourage their development. This role could also be envisaged for the Council of Europe.

In most Council of Europe member states, the norm is that law enforcement authorities have the possibility, while investigating a crime, to ask relevant actors (be they administrative authorities or private entities) for information. These actors, in turn, are obliged to render the required information within a certain time. Furthermore, most member states require that a suspicion that a crime is being committed be reported, which also includes administrative authorities and private entities. Some member states, such as Italy or the Netherlands, have taken a further step in granting administrative authorities additional powers, thus widening the scope of actors actively engaged in the fight against organised crime. This practice is most often referred to as the "administrative" or "multidisciplinary" approach. The most ardent proponent of administrative synergies to date has been the EU. The importance of deploying a set of complementary measures and actions to prevent and combat organised crime has been pointed out in a number of EU strategic documents.[44] Several EU Council Conclusions have dealt with the issue of the administrative or multidisciplinary approach, most notably those on the fight against crimes committed by mobile (itinerant) criminal groups, which called on EU member states to develop an administrative approach as a complement to existing prevention, police and judicial work. These conclusions resulted in the setting up of the informal network of contact points on the administrative approach, whose purpose it is to strengthen co-operation and spread awareness across the EU.[45]

As has been stated above, in many Council of Europe member states some form of administrative synergy is already in place, often without being referred to as such. In Italy and the Netherlands, for example, the issue of a business licence is subject to certification that the applicant has no ties to organised crime.[46] Considerable experience has also been accumulated by Italy in the field of public procurements and public works, requiring the absence of a link with organised crime groups in the tender procedures. In the Czech Republic, to cite another example, private energy companies co-operate with the police in order to help detect clandestine grow houses. Similar examples abound across Europe, where law enforcement authorities face up to the double challenge of cutting costs and tackling state of the art criminal *modi operandi* by enhancing co-operation with other actors.

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43. See for example both Article 5 and Article 35 of the Council of Europe convention on human trafficking, available at http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm, accessed 13 September 2014.
44. These include the Stockholm Programme, the Internal Security Strategy, and the European Commission's Communication on "The EU Internal Security Strategy in action".
45. See also the Special Committee's Report of the European Parliament, paragraphs 90 and 107.
46. As per the anti-Mafia (Italy) and BIBOB (the Netherlands) legislations.

Gaps and problems

Putting administrative synergies into practice on an international level is a daunting task. It requires flexibility and motivation, especially in an environment where many Council of Europe member states are in the process of reviewing and optimising their own national systems of co-operation between law enforcement authorities and other relevant bodies.

Starting at national level, administrative synergies may be hindered by any one or a combination of the following factors:

- legal restrictions (e.g. where a law enforcement authority does not have the authority to request information from another body);
- data protection laws;
- lack of motivation (e.g. where a law enforcement authority has no means of obliging a relevant body to provide it with information);
- lack of awareness of a problem (e.g. where an administrative authority or private entity possesses information that could be useful to law enforcement authorities, yet is unaware of the fact and the information is thus neither volunteered, nor requested);
- lack of efficient communication channels (e.g. where, either as a result of lengthy bureaucratic procedures or an unwillingness to share information, communication becomes lengthy to the extent that the information provided becomes obsolete or useless).

When putting administrative synergies into practice at international level, further challenges present themselves:

- language barriers (e.g. in written correspondence as well as in personal communication);
- delays incurred by transnational communication (e.g. where official requests are necessary, the processing of one request may easily take several months);
- varying legal requirements (e.g. where certain procedures are necessary in one state, but not in another state, or where certain procedures are possible in one state, but have no legislative ground in another);
- lack of insider information (e.g. when the information required is not specific, it can be difficult to know which authority to turn to, or even what information could be required of which authority, without the assistance of liaison officers or contact points).

The majority of countries, when fighting organised crime, co-operate most closely with their immediate geographical neighbours. Ideally, the law enforcement authorities of neighbouring states will have longstanding traditions of co-operation and will have at their disposal a number of bilateral and/or regional instruments aimed at facilitating the exchange of information, joint investigations and other actions pertaining to criminal proceedings.

Considering co-operation outside the field of law enforcement, one could imagine that, where the motivation is high, there is the possibility of involving administrative authorities and private entities based in different countries in a joint transnational investigation

Possible actions

The challenges outlined above should provide a guide to further action to be taken at both national and international levels. In general terms, the Council of Europe could take action in the following areas:

- the systematic promotion of administrative synergies among member states, namely the co-operation of law enforcement authorities with administrative authorities and private entities, through their inclusion in bilateral agreements and international conventions, including mutual legal assistance treaties;
- the encouragement of the building, maintenance and use of efficient communication channels, including liaison officers and contact points. This applies especially to the sharing of information through existing and new databases;
- the promotion of transnational co-operation by informing liaison officers of the importance of administrative synergies and the encouragement of exchange of information relevant for national contact points;
- the encouragement of the exchange of good practices in preventing criminal organisations from infiltrating the private and public sectors;
- a review of the systems and practical implementation of data protection rules with the aim of achieving a higher degree of harmonisation within the legislation of Council of Europe member states and the monitoring of practical implementation to increase the level of mutual trust;

- increasing the awareness of administrative authorities and private entities of their role in preventing and fighting organised crime, including by providing training to give them specific tools with which to identify and report possible organised criminal activity.

One of the most efficient ways to tackle organised crime is to focus on money laundering. Incidentally, it is also in this field that international co-operation could be most potent, due to the well-oiled machine of banking networks already in place across the world.

The Council of Europe is advised to devote further attention to administrative synergies within its own committees, with regards to specific forms of organised crime (e.g. in CDPC, MONEYVAL, GRECO, T-CY).

3.5. RECOVERY OF ASSETS

The target in fighting TOC is not only prosecuting the offenders, but depriving them of the proceeds of crime. To this end, timely tracing of assets in different jurisdictions, effective co-ordination at a transnational level and direct contact among asset recovery bodies is crucial. The seizure and freezing of assets in a transnational setting is lacking in efficiency, and mechanisms to speed up co-operation at this level need to be further explored and implemented.

Criminal assets are a growing concern for many countries. They not only feed corruption and organised crime but also constitute a reliable source for the financing of terrorism. The proceeds of crime in substantial amounts provide not only economic power but also prestige and political influence to criminal organisations, thereby increasing the severity of the threat to society.

The prevalence of the proceeds of crime in the economy brings about unfair competition between economic actors, undermines public finance and negatively affects the rule of law, democratic values and human rights due to the power and influence gained by criminal organisations, while also corrupting society.

Law enforcement experience shows that arresting criminals is not enough to eradicate criminal organisations unless one recovers the assets derived from their criminal activities. Unless a comprehensive plan is developed to take the proceeds of crime away from corrupt officials, smugglers and organised criminal groups, it will not be possible to disrupt criminal activities which are hampering the good governance and transparency of the public sector and decreasing public confidence in the government.

The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Financing of Terrorism, UNTOC and UNCAC are among the binding instruments that provide a unique opportunity to mount a global and regional response to this problem.

Gaps and problems

Several promising initiatives exist that could fill the gap in the area of information sharing and co-operation among states. Europol's Camden Asset Recovery Inter-Agency Network and the Stolen Asset Recovery Initiative are examples of regional and international mechanisms that encourage co-operation between prosecutors and investigators.

But mutual legal assistance is still at a low level due to the lack of dual criminality, despite the best efforts of international conventions and initiatives. Even if a requesting state fully complies with the demands of the requested state, there can be other problems including a lack of expertise, lack of will or inadequately funded central authorities to assist in asset recovery investigations. These problems are not restricted to one geographical area of the world.

There are two main approaches in terms of dealing with the proceeds of crime. One is to link the confiscation with the criminal conviction. In this case, even if it is probable that the assets of a suspect are derived from a criminal offence and the owner or possessor is not able to provide evidence of legal gain, confiscation is not allowed. In this legal system confiscation is governed by the same standard of proof required for the conviction of an individual.

The other approach has been introduced as a model of civil law asset forfeiture and allows the confiscation of assets without a criminal conviction, providing that the assets in question result from criminal activities or are used to carry out criminal activities, upon the decision of a court.

On the basis of Italian practice in investigations of TOC, whenever a defendant is convicted for organised crime, for playing a major role within a criminal organisation or for having performed criminal activities regularly, the judge shall order the confiscation of the money, commodities or any other assets the defendant has at his/her disposal and whose illegitimate origins he/she has not suitably justified in order to disprove the circumstantial evidence collected by the prosecution, provided that the value of the goods and properties mentioned above are disproportionate to the statement of income or the business activity performed. It is also worth mentioning that the Italian experience of preventive measures, including the confiscation of assets disproportionate to legitimate incomes, is based on the model of confiscation in rem, which can be issued by judges in cases where there are insufficient grounds to get a conviction for the crime of participation in a criminal organisation, but there are more than sufficient suspicions on the person involved about his/her contiguity with criminal groups.

Money, commodities or other assets can be confiscated when acquired by a legal person following an organised crime committed by an organ, a representative or any natural person who, on the basis of factual circumstances, is to be considered to have acted to the advantage of or in the interests of such a body. The legal person shall be dissolved if it operated exclusively or primarily for the realisation of criminal activities. The assets remaining from the liquidation shall also be confiscated.

However, the complex nature of financial investigations and the detailed requirements for the identification of banking information in many jurisdictions makes it hard to identify and confiscate criminal proceeds. In many cases the assets of organised criminal groups are held in the name of other persons, especially relatives or friends. Businesses are usually run by front individuals without a criminal record.

Due to the increasing number of tools and choices in the financial sector, it is not difficult for criminals to hide the source of proceeds with the help of professional advice from accountants and legal experts. Being financially motivated, these specialists use their expertise to launder money and place it in the legal economy. Criminals take advantage of the globalisation of the world's economy by transferring funds quickly through online banking, virtual casinos, auctions and smart cards. They utilise legal shields as a means to reinvest illicit profits.

So timely tracing of assets in different jurisdictions, effective co-ordination and direct contact among asset recovery bodies is crucial. If this co-ordination is not established effectively, it is usually impossible to successfully initiate formal mutual legal assistance procedures to confiscate criminal assets.

Indeed, organised criminal groups benefit from ineffective co-ordination and the slow exchange of information among law enforcement and judicial agencies on an international level. Although the level of ratification of international and European instruments dealing with TOC is on the rise, there is still a lack of harmonisation related to criminal definitions, the liability of legal entities and criminal procedural instruments.

Bank secrecy, the use of offshore companies, the differing priorities of the judicial and law enforcement authorities and lack of trust among them makes co-operation more difficult. In some countries there is not even enough political will to actively pursue suspicious financial transactions. In times of economic crisis, some companies and banks tend to ignore the principle of transparency and the preventive measures that exist to combat money laundering.

Statistics available on asset recovery support the idea that the relevant mechanisms in place have not proved effective in addressing this issue from either a regional or an international point of view. The management and disposal of confiscated assets, which are important aspects of the overall process of confiscation, seem problematic for a number of countries. Among the problems that asset recovery offices face on a day-to-day basis are the sale of confiscated real estate, running confiscated firms.

Possible actions

The Council of Europe could take a range of actions to improve recovery of the proceeds of crime:

- resume efforts to ensure that its member states ratify and fully implement its 2005 convention on money laundering[47] as well as the provisions on confiscation of assets included in other Council of Europe conventions;[48]

47. It should be noted that while the Council of Europe convention on human trafficking, also adopted in 2005, has been ratified by 42 parties as of 20 November 2014, only 25 member states have ratified the money laundering convention.

48. See, for example, the Council of Europe convention on human trafficking, Article 23.3 of which makes it obligatory to confiscate the criminal proceeds from trafficking: "Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with Articles 18 and 20, paragraph a, of this Convention, or property the value of which corresponds to such proceeds."

- take political action to ensure that the freezing and confiscation of the proceeds from organised crime are prioritised in the fight against organised crime;
- review the actual results achieved in confiscating the proceeds of crime from criminal organisations in an annual report;
- explore the possibility of creating a central register or database of bank accounts and a register of beneficial ownership of legal persons at national level;
- review legislation to allow specialised law enforcement authorities to access financial intelligence and relevant databases (land registers, property registers, motor registrations, tax registries, bank registers, financial information, etc.) to investigate promptly the preliminary indications of money laundering;
- analyse how far the legislation of Council of Europe member states regulates fast seizure and freezing mechanisms and how these mechanisms are implemented in practice in a transnational setting;
- establish an effective system to manage confiscated assets to ensure that they do not lose their value;
- establish effective confiscation regimes that include a reversal of the burden of proof for cases of organised crime, or similar legal constructions aiming to simplify the confiscation of criminal assets from major criminals;
- consider that for the purpose of confiscation, the goods that are fictitiously registered in the names of third parties or which are possessed by intermediary natural or legal persons acting as "straw persons" are at the disposal of the offender;
- support investigations against organised crimes with a financial perspective to give law enforcement agencies and prosecutors extra information to lead investigations in the right direction and facilitate the detection of illicit financial flows and criminal proceeds;
- ensure active participation and maximise the level of co-ordination and co-operation among the competent units in prosecution, administrative and law enforcement bodies. This strengthened co-ordination should include the setting up of joint prosecutor-investigator task forces. In this regard the opening of parallel investigations for money laundering in the country where illegal assets are allocated and hidden should be recommended as an example of good practice;
- set up international standards and procedures for asset sharing among states in order to combat criminal economy, using a holistic cost-effective approach. States should be encouraged to provide mutual legal assistance on this basis. To this end, ad hoc arrangements, memorandums of understanding or bilateral co-operation agreements should be signed;
- use criminal assets recovered for the benefit of the community such as for the purpose of compensating the victims of crime and financing social work. There should also be an analysis of whether the assets recovered could be used as an incentive for law enforcement agencies, as has happened in France;
- organise special training in order to increase the awareness of those who are in charge of combating these crimes, such as law enforcement authorities and prosecutors. This concept should go beyond national borders and contribute to the upgrading of the operational skills of law enforcement officers and also to building an informal network among them.

Chapter 4

Recommendations and proposals for future action

4.1. GENERAL RECOMMENDATIONS

1. More co-ordinated action against TOC should be promoted. The fight against TOC requires the co-ordination of efforts: the actions and initiatives of the UN, Council of Europe, EU, OECD, Organization for Security and Co-operation in Europe and other organisations with an active role in TOC should be co-ordinated. In particular, initiatives taken in the EU need to be co-ordinated with the actions of the Council of Europe, as the TOC that affects the EU has its origins in third countries and many of the criminal organisations that operate in the EU are originally from, linked to or based in Council of Europe member states.
2. The UN's activities related to the Convention against Transnational Organized Crime should be co-ordinated with Council of Europe initiatives and should take into account the findings of the Organisation's monitoring bodies. Overlapping and non-efficient resource allocation should be avoided.
3. The priority in defining actions should be focused on identifying to what extent national legal systems have implemented the Council of Europe's conventions and recommendations and the UN conventions. The Organisation's numerous instruments, combined with the convention on TOC (which has been ratified by all Council of Europe member states), show that at this moment the priority does not seem to be the drafting of new legal instruments at international level. However, the Organisation should consider it, if necessary.
4. The reasons for non-implementation or lack of adequate implementation of existing legal instruments on combating TOC should be further analysed. Identifying these reasons is a first step towards designing comprehensive strategies and programmes.
5. For a better assessment of TOC reality, the setting up of a unit on TOC, bringing together all the information gathered by the different monitoring bodies, should be considered. If such a "co-ordinating body on TOC" is not considered appropriate, then it would be expected that all the Council of Europe monitoring bodies that deal with serious crimes falling within the category of TOC or directly linked to TOC should be able to cover the whole phenomenon of TOC in order to provide a comprehensive approach that enhances the efficiency of the fight against TOC through common strategies and joint efforts.
6. Further attention within the Organisation's monitoring bodies should be given to the threats posed by TOC. There is a need to raise awareness of the global character of the threats posed by TOC: transnational problems need to be dealt with at a transnational level and with transnational tools. Unless there is co-ordinated action, the spillover effect will end up having a negative effect on those countries where there is less effort to combat TOC.
7. The Council of Europe should encourage its member states to boost civil society participation in dealing with the risks of TOC by raising awareness and protecting victims. Capacity-building activities for law enforcement authorities, judges and prosecutors to fight TOC efficiently (e.g. international co-operation, implementation of witness protection programmes, the use of SITs and the recovery of assets) should be continued. Dissemination and exchange of good practices in the criminal response to TOC should be expanded.
8. The need for a mutual pan-European strategy covering both prevention and suppression of all phenomena of serious and organised crime should be further examined.

4.2. ENHANCING JUDICIAL AND POLICE CO-OPERATION

1. The Council of Europe should design an action plan to enhance mutual trust among its member states, as this undoubtedly fosters co-operation. There should be further analysis on whether some of the measures adopted within the EU area should or could be extended to the Council of Europe landscape.
2. The Organisation should take political action on the ratification of the relevant conventions. States parties should review the need to keep reservations and declarations.
3. The Organisation should promote the accession to its conventions by third countries as well as the establishment of co-operation agreements and projects with relevant non-member states.
4. The Organisation should analyse to what extent the national legal framework on TOC is harmonised within the geographical area of its member states and if the existing divergences represent a significant obstacle in co-ordinating efforts and providing efficient co-operation. If such divergences exist, it should consider where harmonisation or compatibility of legal provisions could be pursued.
5. Further practical measures should be taken to overcome the existing delays in providing international co-operation, to avoid ungrounded refusals and to establish mechanisms to prioritise co-operation in the fight against TOC. The mutual legal assistance conventions intended in a broad sense, including all relevant conventions dealing with extradition, transfer of prisoners and so on, provide an adequate legal framework to enable efficient co-operation, however their application is still not sufficient. The delays incurred are unacceptable for an efficient criminal justice response, and in a technologised society these delays will render prosecutions and the recovery of assets impossible.
6. The evolution of the international co-operation model from traditional requests for mutual legal assistance towards close co-operation and co-ordinated ongoing parallel investigations should be fostered by the Organisation. To this end the ratification of the 2001 Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters – which provides a framework for JITs – should be encouraged.
7. The Council of Europe should promote the connection of existing judicial and police networks and their expansion within a pan-European landscape. The possibility of setting up a unit representing non-EU and Council of Europe member states in Eurojust, for co-operation in certain areas of TOC, could be studied further. Promotion of co-operation agreements and memorandums of understanding should be supported if guarantees for the protection of human rights, and specifically for data protection and privacy rights, are to be safeguarded.
8. Further development of the existing network(s) of contact points in all Council of Europe member states should be studied. The setting up of an institutionalised network of contact points at Council of Europe level (Council of Europe Judicial Network) is recommended.
9. Programmes to ensure that the central units, contact points and judges involved in mutual legal assistance have adequate training and language skills, and are subject to special performance indicators, should be supported.

4.3. THE USE OF SPECIAL INVESTIGATIVE TECHNIQUES

1. Scientific and comparative research should be carried out to collect relevant information on the existing legal frameworks under which SITs operate in Council of Europe member states and the possibility of their harmonisation.
2. The Council of Europe should analyse how SITs are used in practice and evaluate if they are adequately applied. In particular, the Organisation should examine whether SITs are used in a proactive setting and to what extent the preventive and reactive actions to provide a criminal response against TOC are regulated. Practical measures to guarantee the right to data protection and privacy also need to be looked into. There is a need to analyse problems regarding the admissibility of evidence gathered in cross-border investigations within Council of Europe member states. In this regard, the Organisation should play a key role in defining the principles of transnational criminal proceedings.

4.4. WITNESSES, STATE WITNESSES AND COLLABORATORS

1. The Council of Europe should carry out studies to analyse why the protection programmes are not functioning adequately or how they could be improved. With regard to the fight against TOC, the relocation of

protected witnesses should be further studied and evaluated to see if the shortcomings are due to a lack of resources, distrust of the witnesses in their national programmes, etc.

2. Incentives to encourage the co-operation of collaborators should be further analysed. In this regard, various forms of plea bargaining and pre-judicial co-operation agreements that may result in a mitigated punishment should be studied. Both the risks and expected advantages of such activities should be covered.

4.5. SYNERGIES AND CO-OPERATION WITH OTHER ENTITIES

1. Administrative synergies should be systematically promoted, namely co-operation between law enforcement and administrative authorities (e.g. financial supervisory units) and private entities (e.g. banks, transportation companies).
2. Transnational co-operation should be promoted by informing liaison officers of the importance of administrative synergies and the exchange of information relevant for national contact points should be encouraged.

4.6. RECOVERY OF ASSETS

1. The actual results of seizure, management and confiscation of the proceeds of crime from criminal organisations should be reviewed in an annual report. Swift execution of requests for freezing assets should be a priority.
2. The existence of central offices for the recovery and management of assets in Council of Europe member states and their efficiency should be analysed, to make an assessment of the model to be followed in the setting up of a specialised unit for the recovery of assets.
3. The Organisation could further explore the effectiveness of a centralised national register of bank accounts.

Chapter 5

Conclusions of the committee

Despite multiple initiatives undertaken by other international and supranational organisations, there are certain areas where the Council of Europe could and should play an important role in the fight against TOC, especially by operating across pan-European territory.

The Organisation should play a key role in the creation of a new pan-European network on international legal assistance in criminal matters, and also in the development of links among existing networks to provide mutual legal assistance in criminal matters. It is in a unique position to foster co-operation agreements in specific areas where its member states need to co-operate more efficiently.

If there is a lack of political will to implement co-operation mechanisms among member states, the Council of Europe should study the reasons for this and define the political approach to be followed to help overcome such obstacles in the fight against TOC.

The proposals made in this White Paper have tried to be as precise as possible, but more empirical data is needed to re-define the precise actions to be developed. Among the actions proposed are the setting of priorities and a step-by-step programme or roadmap to be approved at a later stage in order to adopt more concrete measures and actions.

Appendix 1 – Selected texts

UNITED NATIONS

United Nations Convention against Transnational Organized Crime, adopted by General Assembly Resolution 55/25 of 15 November 2000, and the Protocols thereto: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air, and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition

United Nations Convention against Corruption, adopted by General Assembly Resolution 58/4 of 31 October 2003

UNODC draft comprehensive study on cybercrime (not yet adopted)

COUNCIL OF EUROPE

European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its Additional Protocol (ETS No. 99) and Second Additional Protocol (ETS No. 182)

European Convention on the International Validity of Criminal Judgments (ETS No. 70)

European Convention on the Transfer of Proceedings in Criminal Matters (ETS No. 73)

European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116)

Convention on Insider Trading (ETS No. 130) and its Protocol (ETS No. 133)

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141)

Agreement on Illicit Traffic by Sea, implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (ETS No. 156)

Criminal Law Convention on Corruption (ETS No. 173) and its Additional Protocol (ETS No. 191)

Civil Law Convention on Corruption (ETS No. 174)

Convention on Cybercrime (ETS No. 185)

Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197)

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198)

Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health (CETS No. 211)

EUROPEAN UNION

Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering

Joint Action concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union, 96/277/JHA, 27 April 1996

Joint Action on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union, 98/733/JHA, 21 December 1998

Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States and subsequent amending act

Council Framework Decision 2002/465/GAI of 13 June 2002 on joint investigation teams (and report from the Commission on national measures taken to comply with the Council Framework Decision of 13 June 2002 on Joint Investigation Teams (COM(2004)0858)

Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence

Council Framework Decision 2005/212/JHA of 24 February 2005 on confiscation of crime-related proceeds, instrumentalities and property

Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

EC Third Directive and the Council of Europe Convention CETS No. 198 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism

EU Drugs Strategy (2005-2012) and the EU Action Plan on Drugs (2009-2012)

Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders

Council Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union

Council Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, 27 November 2008

Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network

Council resolution of 25 September 2008 on a comprehensive European anti-counterfeiting and anti-piracy plan

Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law

Council resolution of 23 October 2009 on a reinforced strategy for customs cooperation

Council Decision 2009/371/JHA establishing the European Police Office (Europol)

Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime

Council Conclusions on combating the criminal misuse and anonymous use of electronic communications, 2908th JHA Council meeting, Brussels, 27 and 28 November 2008

Council Conclusions on supporting the Council of Europe's legislative work in the area of criminal justice, 2927th JHA Council meeting, Brussels, 26 and 27 February 2009

Stockholm Programme and the Action Plan Implementing the Stockholm Programme (COM(2010)0171)

Draft Council Conclusions of 20 May 2010 on the Prevention and Combating of the Illegal Trafficking of Waste, particularly international trafficking

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims

Council conclusions on the new EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, 3195th JHA Council meeting, Luxembourg, 25 October 2012

Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union

Appendix 2 – List of abbreviations

BKBOP	Office for the Coordination of the Fight Against Organized Crime and Other Dangerous Types of Crime on the Territory of the Commonwealth of Independent States (CIS) Participant-States
CARICC	Central Asian Regional Information and Coordination Centre for combating the illicit trafficking of narcotic drugs, psychotropic substances and their precursors
CARIN	Camden Assets Recovery Interagency Network
CDPC	European Committee on Crime Problems
CODEXTER	Committee of Experts on Terrorism
COEJN	Judicial network at Council of Europe level
Court	European Court of Human Rights
EJN	European Judicial Network
EU	European Union
EUROPOL	European Police Office
GRECO	Group of States against Corruption
GRETA	Group of Experts on Action against Trafficking in Human Beings
GUAM	Organisation for Democracy and Economic Development
IberRED	The Ibero-American Network for International Legal Cooperation
ICPO	International Criminal Police Organization (Interpol)
ICT	Information and Communication Technology
IMoLIN	International Money Laundering Information Network
JIT	Joint investigation team
MEDICRIME	Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering and the Financing of Terrorism
NCB	National central bureaus
OECD	Organisation for Economic Co-operation and Development
OLAF	European Anti-Fraud Office
OSCE	Organization for Security and Co-operation in Europe
PCC SEE	Police Co-operation Convention for Southeast Europe
PC-GR-COT	Ad hoc Drafting Group on Transnational Organised Crime
PC-OC	Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters
Pompidou Group	Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs
SIT	Special Investigative Technique
SOCTA	EU Serious and Organised Crime Threat Assessment
StAR	Stolen Asset Recovery Initiative
T-CY	Cybercrime Convention Committee

TOC	Transnational organised crime
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime
VLEC	Virtual Law Enforcement Center

Transnational organised crime (TOC) represents a major threat to global security. It threatens peace and human security, violates human rights and undermines the economic, social, cultural, political and civil development of societies worldwide. Because of its transnational character, TOC requires a targeted and comprehensive approach, including the swift application of international co-operation mechanisms.

This white paper, drafted at the request of the Committee of Ministers, establishes five areas in which the Council of Europe could contribute to fighting TOC and identifies specific tasks that could be carried out better or more efficiently by the Organisation: 1. problems related to police and judicial international co-operation, 2. the use of special investigative techniques, 3. the implementation of witness protection programmes and collaboration of state witnesses, 4. the need for increasing co-operation with administrative agencies and the private sector and 5. the essential need to target the proceeds of crime in order to discourage this type of crime and to improve the effectiveness of the fight against criminal organisations that operate in a transnational setting.

With an innovative multidisciplinary approach and the choice to focus on improving the criminal response in a transnational setting, this White Paper is intended to become a helpful tool for policy makers and practitioners alike.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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