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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

REFLECTION DOCUMENT FOR AN ACTION PLAN
ON TRANSNATIONAL ORGANISED CRIME

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**Council of Europe Action Plan to address the issue of
Transnational Organised Crime (TOC) in Europe 2016-2021**

Table of Contents

1.	Introduction	2
1.1.	Mission	2
1.2.	Fundamental principles and strategic goals	2
1.3.	Key action lines.....	2
1.4.	Cross-cutting aspects	3
1.5.	Implementation and follow up	3
2.	Action lines.....	4
2.1.	Action line No. 1: Problems relating to police and judicial international co-operation.....	4
2.2.	Action line No 2: The use of special investigative techniques (SIT's)	5
2.3.	Action line No 3: The implementation of witness protection programmes and collaboration of state witnesses	6
2.4.	Action line No 4: The need for increasing co-operation with administrative agencies and the private sector	6
2.5.	Action line No 5: The essential need to target the proceeds of crime	7
3.	Cross-cutting aspects.....	9
3.1.	Introduction.....	9
3.2.	Co-ordinated efforts between international organisations.....	9
3.3.	Co-ordinating body	9
3.4.	Awareness raising and training	9
4.	Implementation and follow up.....	11
4.1.	Introduction.....	11
4.2.	Implementation	11
4.3.	Follow-up.....	11

1. Introduction

1.1. Mission

1.1.1. White Paper on Transnational Organised Crime

1. The White Paper on Transnational Organised Crime (TOC) was prepared by the Ad Hoc Drafting Group on Transnational Organised Crime (PC-GR-COT) set up by the Committee of Ministers¹ of the Council of Europe under the aegis of the European Committee on Crime Problems (CDPC). The White Paper recognised that, with the nature of the crime being mostly transnational, the fight against TOC must be done through an efficient application of international co-operation mechanisms. As a result it detailed possible actions to be undertaken by the Council of Europe (CoE) in this field.
2. Following the endorsement of the White Paper by the CDPC² in June 2014, the CDPC decided to prepare a detailed Action Plan as a follow-up to the recommendations included in the White Paper. These decisions by the CDPC were presented to the Committee of Ministers of the Council of Europe on 7 October 2014. This Action Plan is intended to provide concrete proposals for member States of the CoE so that they can effectively address some of the issues detailed in the White Paper.

1.2. Fundamental principles and strategic goals

1.2.1. Fundamental principles

3. Co-operation between the CoE member States will be enhanced in the areas of prevention, investigation, prosecution of, and judicial decisions related to transnational organised crime. Moreover, co-ordination among CoE bodies responsible for issues related to combating transnational organised crime and co-operation among those bodies with relevant international organisations/bodies, and in particular with the United Nations Office on Drugs and Crime (UNODC), will be encouraged.

1.2.2. Strategic Goals

4. In presenting its analysis and conclusions on TOC, the White Paper concentrated on key areas where the CoE could make a specific impact and provide real added value. The main objective of the Action Plan would therefore be to provide concrete activities to be implemented in each key area (action line). These key areas are all interconnected, of equal importance and are also supported by general actions in cross-cutting/interrelated sectors.

1.3. Key action lines

5. The 5 action lines are the following:
 - No 1: Problems relating to police and judicial international co-operation
 - No 2: The use of special investigative techniques

¹ The Terms of reference of the Ad hoc Drafting Group on Transnational Organised Crime (PC-GR-COT) were adopted by the Committee of Ministers of the Council of Europe at the 1155th meeting on 21 November 2012.

² The 66th Plenary Session took place from 10-13 June 2014.

- No 3: The implementation of witness protection programmes and collaboration of state witnesses
- No 4: The need for increasing co-operation with administrative agencies and the private sector
- No 5: The essential need to target the proceeds of crime

1.4. Cross-cutting aspects

6. Most of the proposed actions set out in the White Paper have cross-cutting aspects across a number of CoE bodies. Therefore in implementing this Action Plan, the CoE should involve its bodies with specialised knowledge in specific areas. Such bodies are the CoE anti-money laundering body (Moneyval), the Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (The Pompidou Group), the CoE Committee of Experts on the Operation of European Conventions in the Penal Field (PC-OC), the Group of States against Corruption (GRECO), the Committee of Experts on Terrorism (CODEXTER) and the Group of Experts on Action against Trafficking in Human Beings (GRETA).

1.5. Implementation and follow up

7. One possibility (to be discussed and developed) is that the TOC Action Plan could be implemented over a period of 5 years. This seems an appropriate timeframe given the complexity of the subject matter, the transnational nature of the crimes considered and the need to ensure the proper implementation of the Plan. Throughout this five-year period, the activities from the cross-cutting aspects will also be implemented where appropriate. At the end of each year an exchange of views on developments in members States will take place in order to ascertain the status of implementation of these actions. The CDPC will be in charge with the task of ensuring a proper follow-up and implementation of the Action Plan. The CDPC should work closely with all other CoE relevant bodies (see paragraph 6).

2. Action lines

2.1. Action line No. 1: Problems relating to police and judicial international co-operation

2.1.1. Introduction

8. Improving international co-operation in fighting TOC needs an adequate legal framework, effective implementation and progress towards new models of closer co-operation. Ratification of the relevant conventions and a review of reservations is the first step. The second step lies in more effective and regular replies to requests from other States, which will help to overcome undue delays and obstacles. Finally, in order to fight a complex phenomenon like TOC, international networking co-operation at law enforcement and judicial level is crucial.
9. The CoE can specifically contribute in this area by providing networking activities for its member States in order to address the lack of mutual trust between them. The building up of mutual trust will not only contribute to closer co-operation on a more general level but will lead to a faster and more efficient system of dealing with requests.

2.1.2. Objectives

- i. To enhance international co-operation, particularly between the police and the relevant judicial authorities of the member States.
- ii. To promote and enhance relationships of trust between all of the CoE member States.
- iii. To improve co-operation between CoE member States regarding mutual legal assistance in TOC.
- iv. To ensure the harmonisation of national legislation on specific provisions relating to TOC.
- v. To create institutionalised networks of contact points in CoE member States and of joint investigation teams (JITs), in particular as provided by Article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.
- vi. To create better trained / well-trained legal professionals with specialised knowledge of international co-operation.

2.1.3. Specific actions

10. A special session on international co-operation as regards the seizure and confiscation of proceeds of crime, following the decision of the CDPC³, was organised during the 67th plenary meeting of the PC-OC. The aim of this session was to assess the efficiency of international co-operation in this regards on the basis of the relevant CoE legal instruments (the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS No.141), 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)), to identify obstacles and propose solutions to them. This special session was held on 19 November 2014.

³ At the CDPC 66th Plenary meeting held in Strasbourg on 10-13 June 2014.

11. The PC-OC could do a study on the effective use of the possibilities offered by the 2nd Additional Protocol to the European Convention on Mutual assistance in criminal matters as regards in particular the use of joint investigation teams, special investigative techniques, cross-border observation, etc. with a view to identifying possible obstacles and finding solutions to address them.
12. Further actions will be formulated in the future by a Working Group.

2.2. Action line No 2: The use of special investigative techniques (SIT's)

2.2.1. Introduction

13. Special investigate techniques are specific methods used by law enforcement agencies in the fight against TOC. These are vital tools in helping to penetrate organised criminal groups. They also make up for the inadequacy of traditional methods of investigation which are easily countered by organised criminal groups. The White Paper highlighted that, whilst detecting and prosecuting TOC through SIT's was indispensable, their use has to be counterbalanced with adequate measures that guarantee the protection of human rights and give the possibility to prevent abuse. It stated that although there was wide usage of SIT's in CoE member States, their practice was not adequately regulated, in particular in relation to electronic evidence. Actions must be taken to avoid mounting a general 'fishing expedition' with a view to gathering potential evidence, which is neither effective nor compatible with Article 8 European Convention on Human Rights (ECHR). The lack of precise rules and legal harmonisation in this area poses difficulties to the cross-border transfer of evidence.
14. The added value of a CoE contribution in this area is that the CoE already has a number of legal instruments dealing with SIT's⁴. Such legislation, if implemented, can help to fill the gaps in the domestic law of CoE member States where there are no specific or comprehensive guidelines balancing the interests of the criminal investigation and the protection of rights of citizens. The CoE can also help to harmonise terminology by defining key terms in this area.

2.2.2. Objectives

- i. To reach a common standard and a uniform understanding between CoE member States on the use of SIT's and especially their limits.
- ii. To further promote the adoption by CoE member States of the existing CoE legislation.
- iii. To ensure that human rights are adequately protected.

2.2.3. Specific actions

15. To amend Recommendation Rec(2005)10 of the Committee of Ministers to member states on "special investigation techniques" in relation to serious crimes including acts of terrorism, so as to reflect the balance between addressing new technical capabilities in SITs and adhering to human rights in the application of SITs. The updating of this Recommendation addresses the problem of the lack of uniform rules on the limitations of SITs.

⁴ Some examples are: Recommendation Rec(2005)10 of the Committee of Ministers to member states on "special investigation techniques" in relation to serious crimes including acts of terrorism and the Convention on Cybercrime (CETS No. 185)

16. Further actions will be formulated in the future by a Working Group.

2.3. Action line No 3: The implementation of witness protection programmes and collaboration of state witnesses

2.3.1. Introduction

17. In relation to the implementation of witness protection programmes it is clear that witnesses play a key role in the investigation, prosecution and adjudication of TOC and there are already a number of measures designed to ensure that they can testify safely both during and after trial. The White Paper considered that there are enough legal instruments in this area and that the focus should instead be on their practical implementation.

18. In relation to the collaboration of state witnesses, the need for co-operation of ‘insiders’ is crucial in investigating and combating TOC. The White Paper considered the controversial nature of the establishment of incentives for the co-operation of co-offenders despite many international legal instruments requiring such co-operation. It highlighted that for the most part such ‘incentives’ fall under the remit of the general principles of sentencing and there is therefore no uniformity between CoE member States in this regard.

19. The CoE can specifically contribute in this area because it has a number of legal instruments on this subject⁵ and can take measures to ensure their practical implementation. This being so, it is important to understand the reasons for not implementing these legal instruments in order to provide solutions at pan-European level.

2.3.2. Objectives

- i. To analyse the actual impact of witness evidence in combatting TOC and the number and quality of witness protection programmes.
- ii. To identify the shortcomings in the implementation of witness protection programmes in order to ensure that witnesses play a key role in the fight against TOC.
- iii. To study and assess the incentives within CoE member States which are given to co-offenders.

2.3.3. Specific actions

20. Actions to be formulated in the future by a Working Group.

2.4. Action line No 4: The need for increasing co-operation with administrative agencies and the private sector

2.4.1. Introduction

21. Co-operation with administrative agencies and the private sector is becoming increasingly important due to advances in information and communication. Such co-operation would enable a cost-efficient extension of the powers to counter TOC through active co-operation and an exchange of information between such bodies and law enforcement agencies.

⁵ For example, Recommendation Rec(2005)9 of the Committee of Ministers to member states on the protection of witnesses and collaborators of justice

22. Administrative synergies are the various forms of co-operation between law enforcement agencies, administrative authorities and private entities. Such administrative authorities can play a key role in identifying and deterring TOC that infiltrates state and private legal activities for the purpose of committing crimes, laundering money and organising frameworks to conceal the financing of crime (“White-collar crimes”).
23. This area is extremely important but it is also difficult to implement without international co-ordination. That is why the CoE can contribute in the promotion of such administrative synergies amongst its member States by spreading information and exchanging good practices between them.

2.4.2. Objectives

- i. To promote co-operation between administrative authorities and the private sector in order to better identify crimes committed in these sectors and also gather information in order to prosecute organised crime.
- ii. To ensure that the co-operation between law enforcement agencies and private entities is effective.
- iii. To promote mutual trust and understanding between administrative authorities and the private sector

2.4.3. Specific actions

24. Actions to be formulated in the future by a Working Group.

2.5. Action line No 5: The essential need to target the proceeds of crime

2.5.1. Introduction

25. Depriving organised criminal groups of their proceeds of crime can greatly debilitate these groups and decrease their power. To obtain this goal, the law enforcement authorities need to trace assets in different jurisdictions, have effective co-ordination at a transnational level and direct contact between asset recovery bodies. The White Paper highlighted that the seizure and freezing of assets in a transnational setting lacks efficiency and therefore mechanisms to speed up co-operation at this level need to be further explored and implemented. Particularly important is the management of assets once they have been seized and confiscated. An effective management system would ensure that these assets do not lose their value.
26. The CoE is a unique forum where harmonisation can be achieved through the encouragement of the signature and ratification of its numerous legal instruments and through the establishment of effective regimes, both in relation to seizure and freezing, but also to confiscation.

2.5.2. Objectives

- i. To increase the efficiency of seizure and freezing of assets at a transnational level and to enforce mechanisms to enable speedy co-operation between States.
- ii. To promote greater international information flow on assets between States.

- iii. To enhance relationships between CoE member States ensuring faster and more frequent responses to requests.
- iv. To increase the seizure and freezing of assets used in TOC across CoE member States.

2.5.3. Specific Actions

27. Actions to be formulated in the future by a Working Group.

3. Cross-cutting aspects

3.1. Introduction

28. Transnational Organised Crime affects numerous States across Europe and can take many different forms. In this regard, in addition to the 5 key action lines stated above, further actions need to be taken into consideration to address this multidimensional crime.
29. Within the CoE different and well-recognised bodies with specialised expertise can address particular actions from a specialised point of view. These bodies include Moneyval, GRECO, PC-OC, the Pompidou Group, GRETA and CODEXTER. Together they can address TOC with a cross-cutting response.

3.2. Co-ordinated efforts between international organisations

30. Co-ordinated action against TOC should be promoted, particularly between international actors which have a role to play in TOC. Specific co-ordination between the CoE and stakeholder organisations should be envisaged. In particular, the CoE and the EU should co-ordinate their efforts and activities due to shared membership. Furthermore the UN and the CoE must work together in relation to activities linked to the Palermo Convention in order to increase efficiency and reduce the overlap of resource allocation.

Specific actions to be taken:

31. Actions to be formulated in the future by a Working Group.

3.3. Co-ordinating body

32. A comprehensive approach is crucial in order to effectively fight TOC, define common strategies and bring CoE member States together in a joint effort. Such an approach can only be taken through a co-ordinating body operating within the CoE landscape. This body would have the specific role of consolidating all the input and data gathered by the different relevant involved bodies. It is proposed that this co-ordinating body is the CDPC. In its coordinating role, the CDPC should closely work together with all other relevant CoE bodies (see paragraphs 6 and 29 above). It should also ensure that the work already carried out in other international fora is duly taken into account and that duplication of activities is avoided.

Specific actions to be taken:

33. Actions to be formulated in the future by a Working Group.

3.4. Awareness raising and training

34. Awareness should be raised within the CoE monitoring bodies on the global character of the threats posed by TOC. Specific awareness-raising activities should be carried out in CoE member States where the monitoring bodies know that TOC is the most prevalent. Transnational problems need to be dealt with at a transnational level and with transnational tools.

35. Although a certain amount of training dealing with the fight against TOC already exists in some areas for law enforcement authorities and legal professionals, it is a vital tool for dealing with TOC and therefore should be further promoted and expanded. In addition, good practices in CoE member States should be shared in order to gain greater knowledge of TOC. This can be done in part by an exchange of views between the CoE and its member States.

Specific actions to be taken:

36. Actions to be formulated in the future by a Working Group.

4. Implementation and follow up

4.1. Introduction

37. The governments of CoE member States have the primary responsibility for implementing these policies at a national level under each action line. However, implementation of the Action Plan should also be a matter of priority for the CoE and its relevant bodies.
38. The Action Plan acknowledges that law-enforcement mechanisms, procedural machinery and resources differ from country to country. It therefore allows CoE member States to decide their own national priorities and to take a progressive approach to the implementation process by whatever means are appropriate and available to them.

4.2. Implementation

39. A five-year implementation strategy should be established for the TOC Action Plan. During these five years, a specific action line for implementation by CoE member States could be focused on each year.
40. Member States should start with an evaluation of their existing measures and legislation governing TOC and compare these with the actions put forward in the TOC Action Plan in order to identify the areas where progress has yet to be made and which specific actions have to be carried out.
41. Based on that evaluation, CoE member States should set up strategies to ensure that their measures and actions advance progressively in line with the Council of Europe TOC Action Plan.
42. Member States should have a responsibility to establish a timetable, in line with the 5-year CoE Action plan, to develop the measures outlined and to prioritise the implementation of these measures.
43. Member States should translate the TOC Action Plan into their official languages so that information on the Action Plan will be more easily available to all relevant stakeholders. They will also promote the Action Plan by involving all relevant stakeholders in order to gain long-term support.
44. CoE should assist member States in implementing the Action Plan.

4.3. Follow-up

45. The governments of CoE member States have the primary responsibility for the follow-up to be given to the TOC Action Plan at a national level, where they should decide on the appropriate review and follow-up arrangements.
46. From the perspective of the CoE, following each year of implementation of an action line, as well as providing information on the implementation of the actions, each member State should provide information on the follow-up to the implementation process. The information provided by national governments should include all information from any relevant stakeholders.

47. The CoE should provide any necessary assistance to member States to facilitate the collection, analysis and exchange of information, experience and good practise between them to improve their capacity to give concrete follow-up to the Action Plan.