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**EUROPEAN COMMITTEE ON CRIME PROBLEMS**  
**(CDPC)**

**COMMENTS ON REFLECTION DOCUMENT FOR AN ACTION PLAN ON  
TRANSNATIONAL ORGANISED CRIME**

Document prepared by the CDPC Secretariat  
Directorate General I – Human Rights and Rule of Law

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## Table of Contents

FINLAND .....	3
GERMANY.....	4
LATVIA .....	6
NETHERLANDS .....	9
RUSSIAN FEDERATION.....	21
SWEDEN.....	23

## **FINLAND**

Dear Sir/Madam

Thank you very much for giving the possibility to comment the Action Plan on Transnational Organised Crime.

In general, Finland welcomes the European committee on crime problems and its "Reflection document for and action plan on transnational organized crime".

Our minor concern is that how to avoid duplicated work within prevention of organized crime in European and global context. Especially, our concern is focused on the new tasks of information network area, that might duplicate work and tasks on the field.

It is important to take note of the work (both ongoing work and work done by) of the T-CY regarding Cybercrime matters particularly regarding e-evidence and international cooperation.

## **GERMANY**

The German delegation appreciates the preparation of the Reflection Document for an Action Plan. We do agree with the general outline of the document and the approach as set out in chapter 1. Obviously, most of the substance in terms of “specific actions” is still missing and needs to be specified before the Action Plan can be adopted as such. Thus the small Working Group referred to in the Reflection Document should be set up and asked to prepare comprehensive draft Action Plan.

We also agree with the approach that the Action Plan should cover a period of five years. Thus the draft Action Plan (or at least the final version that is supposed to be adopted) should take due account of what can reasonably be expected to be done during that period by way of implementation.

We are not convinced yet of the approach foreseen in chapter 4 (Implementation and Follow-up): this seems to assume that the “Specific Actions” will primarily be activities to be “implemented” by the member States individually (sections 4.1, 4.2 and 4.3). This will obviously depend on the specific content to be foreseen in the sections on “Specific Actions”. It is to be assumed, however, that some of these will primarily require future activities by the respective Council of Europe bodies and/or the CoE Secretariat. The Action Plan thus should differentiate between “Specific Actions” to be implemented by CoE bodies and those to be implemented by member States. Furthermore, we are not convinced of the idea that the conceived five “action lines” should each be the focus of activity in one of these five years (section 4.2, paragraph 39). The usefulness of such an approach will depend on the final description of the “Specific Actions”; however, it would not appear to be necessary to address these one after the other.

Specific comments:

### **Section 1.4 para 6**

We would suggest adding here as well the T-CY

### **Section 2.1.2**

We assume this section is intended to reflect the White Paper. We would suggest that the text in subparagraph i. should better read: “To enhance international cooperation between police authorities and between judicial authorities of the member States”. The way it is worded now seems to suggest direct co-operation between police authorities of one member State and judicial authorities of another. We find no such suggestion in the White Paper and we would be concerned about including this as an objective.

As to subparagraph v., we would not consider this to be a valid “objective”. The section should describe what the objective to be achieved is. The creation of a new network should not be an objective as such but could – where necessary – be a specific action in order to reach a wider objective. On substance, we are not convinced that it will be necessary to create any “institutionalized network”. The PC-OC is doing commendable work also as network of experts of the relevant central authorities on judicial cooperation. What could be useful is to seek further co-operation and co-ordination with other existing networks in order to use synergies and avoid duplications of work.

### **Section 2.1.3 paragraph 11**

We welcome the idea in principle. However, it could be useful to have the PC-OC start with one of the mentioned subjects first (such as special investigative techniques) and then to evaluate if this approach is feasible and likely to create an added value. Another idea, however, could be to develop country-fact-sheets on specific issues and make those available on a website for use by practitioners.

### **Section 2.2 paragraph 14**

We appreciate the usefulness of the Recommendation mentioned here. However, aside from the fact that a recommendation may not necessarily be considered to be a “legal instrument”, reference here is made only to one recommendation in the field. Thus the first sentence (“a number of legal instruments...” ) as well as the footnote (“some examples are...”) is, perhaps, “exaggerating” a bit.

As to specific actions in this field (section 2.2.3) it could be useful to address in particular cybercrime investigations and to foresee a role for the T-CY in this respect.

### **Section 2.5.1 paragraph 25**

We suggest to include here a sentence same or similar as in 2.2.1 paragraph 13 on the need to counterbalance measures with the protection of human rights.

Furthermore, we suggest rewording the second but last sentence. In the (important) overall context of targeting the proceeds of crime, it would seem to be particularly important to develop the necessary resources and abilities to investigate, freeze and seize. The “management” is something to be addressed as well. But to state that this is “particularly important” perhaps distorts the dimensions a bit.

### **Section 2.5.3 paragraph 27**

We appreciate the inclusion of this item. The Working Group could e.g. consider work to be conducted by the CoE by reviewing the numerous existing studies, country-fact-sheets and best-practices papers produced by other bodies, such as the EU, OECD, G20, G7, UNODC and World Bank with a view to identify possible fields of additional activities for the CoE.

### **Section 3.1 paragraph 29**

Here, again, the T-CY should be added.

### **Section 3.3 paragraph 32**

We would agree that the CDPC can and should have an important role in overseeing further work by the CoE in this field. We are not sure, however, what is intended by the reference to “input and data gathered by the different relevant involved bodies”. The Action Plan should not foresee a role for the CDPC which it – for lack of resources – cannot fulfill. This will in particular also be a question of resources available in the relevant CoE Secretariat units.

## **LATVIA**

### **Section 1.4. paragraph 6**

Taking into account modern terrorism forms and mobility of persons involved in terrorism, Member states should exchange with related information not only nationally, but also internationally, especially on states nationals, who are involved in terrorist actions abroad. Therefore we suggest addition of following sentence at the end of section 1.2. paragraph 6:

“Taking into account modern terrorism forms and mobility of persons involved in terrorism, Member states should exchange with related information not only nationally, but also internationally.”

### **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). [Taking into account modern terrorism forms and mobility of persons involved in terrorism, Member states should exchange with related information not only nationally, but also internationally.](#)

### **Section 2.1.1. paragraph 8**

One of the ways how to improve co-operation between EU Member states could be implementation of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, in order to carry out probation effectively even in a cases when subject changes his or her residence to other member state. This may also be an issue to a non-EU member states.

Also all Member states should take into account activities of United Nations Office on Drugs and Crime (UNDOC).

## **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.

### **Section 2.1.1. paragraph 9**

One of the crucial points of international co-operation is information exchange on persons, who may pose threat to national security (for example convicted persons on probation). Therefore, in order to enhance national and international co-operation on information exchange between agencies, each Member state should adopt “single point of contact” policy and also promote training and capacity building activities.

Therefore we suggest addition of following sentence at the end of section 2.1.1. paragraph 9:

“For example in order to enhance national and international co-operation on information exchange between agencies states should adopt “single point of contact” policy and also promote training and capacity building activities.”

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. For example in order to enhance national and international co-operation on information exchange between agencies states should adopt “single point of contact” policy and also promote training and capacity building activities.

### **Section 2.1.2. subparagraph iv**

When dealing with persons who pose threat to public safety it is also important to focus on a single common vision of the categories of such persons. This should be reflected in common criteria for such persons.

Therefore we suggest addition of following sentences at the end of section 2.1.2. subparagraph iv:

“It is also important to focus on a single common vision of the categories of persons who pose a threat to public safety. This should be reflected in common criteria for such persons.”

#### *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. It is also important to focus on a single common vision of the categories of persons who pose a threat to public safety. This should be reflected in common criteria for such persons.

### **Section 2.1.2. subparagraph v**

Creation of permanent institutionalized networks of contact points in CoE and of joint investigation teams (JITs) is questionable as international joint investigation teams are created only in specific occasions and for investigation of certain offenses, and if investigation is carried out in multiple countries at the same time. Main principle of creation of joint international investigation team is related to type of a crime and in need of cooperation because of jurisdiction limits of investigation actions. Also we need to take into account national regulations and practices of Member states.

Therefore we suggest express section 2.1.2. subparagraph v as follows:

“Member States are invited to create institutionalised networks of contact points in CoE and of joint investigation teams (JITs) if Member states legislation provides such possibility, in particular as provided by Article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters”

- v. Member States are invited ~~to~~ create institutionalised networks of contact points in CoE ~~member States~~ and of joint investigation teams (JITs) if Member states legislation provides such opportunity, in particular as provided by Article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.



## **NETHERLANDS**

We want to reiterate that the Netherlands considers the combat and prevention of organised crime a serious matter which should be undertaken by each Member State on its own territory and in cooperation with others wherever this is necessary. That is why we as a nation have set up in task forces to combat organised crime and have put much effort in negotiating the UNTOC and in it the very substantive provisions on international cooperation in criminal matter but also in the issue of prevention. We think it essential not to duplicate via the action plan work that has already been done or is going on in other fora such as the UN.

We were in favour of setting up an expert group under the CDPC and we are thanking the group that it has come up with suggestions for further activities. At first glance the comprehensive approach seems impressive on further reflection we got the idea that experiences in some Member States have become predominant in determining the follow up and the remedies. However, we have the experience that organised crime takes many forms, which may contain certain similarities, but which also differs from country to country and requires therefore focused approaches. Against this background we do think that in the action plan there is to much emphasise on more harmonisation measures be it legally or in policy and to much focus on evaluation of Member States activities, etc.

The exclusive focus on organized crime by the group was logical but in designing the action plan at least some consideration should have been given, that Member States are facing more than only organised crime to deal with. Member States devote their time, money and effort to issues that are considered important at the national level. The activities in fighting and preventing organised crime will be embedded there in.

Where at present many Member States are facing serious threats of criminal and other nature we must be realistic and be more modest in designing an action plan for organised crime. This relates to the content as well as to the period it will run.

We have seen already that within the Council of Europe changes have been made by giving priority to an expert group on an additional protocol to the terrorist convention over a group on special investigative technics.

We enclose our comments on the reflection document, which are in part similar to comments of other countries, and are made in order to get to an action plan that improves the effectiveness of fighting and preventing organised crime and takes into account the aspects mentioned above.

## 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~~.

**Co operation with UN must be strengthened because we do not want "double emploi".**

### 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.

**The part of the sentence [ ] is in our opinion not correct. We suggest to give priority on action line 4 since this is under developed in nearly all countries.**

#### **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).

**Like Germany: add T-CY**

#### **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).

**Where in general the mandates for CDPC and expert groups have to be renewed, it seems inconsistent to fix a 5 year period now for these activities. This 5 year period does also presume that nothing will happen in other international organisations.**

**We understand the wish to create some continuity but we want to keep flexibility. Therefore we suggest that in each year an overview of activities within the CoE and in other bodies is presented to the CDPC/CM which helps to decide how to continue.**

### 2.1.2. Objectives

- i. To enhance international co-operation, particularly between the police and the relevant judicial authorities of the member States.

#### **Idem as Germany**

- 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.

#### **We want to exclude here any idea of introducing the concept of mutual recognition**

- iv. To ensure the harmonisation of national legislation on specific provisions relating to TOC.

#### **Like Sweden, we want to delete this.**

- 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.

#### **Delete this point, since how many networks do we want to create, the focus should be facilitating setting up of JITs where necessary. Here the PC-OC could play an important role in proposing possible ways forward. This is addressed under point 11.**

- vi. To create better trained / well-trained legal professionals with specialised knowledge of international co-operation.

10. A special session on international co-operation as regards the seizure and confiscation of proceeds of crime, following the decision of the CDPC<sup>3</sup>, was organised during the 67<sup>th</sup> 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.

***We all know that seizure but foremost confiscation is very difficult in practice, while at the same time it could be an effective instrument in fighting organised ( and other) crime. More effort should go into this subject. The PC-OC could als be used as a forum to exchange best practices on confiscation at the national level, since improving that will also help to improve international cooperation.***

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.

***We suggest to add practical before solutions such as the country fact sheets suggested by Germany.***

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

***We do not want to give such a wide mandate***

## **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.

***We strongly oppose harmonisation of procedural rules, since the balance to be found between the interests of investigation and the procedural safe guards are quite often interwoven in the system of a criminal code. Specific rules focusing on some aspects of investigations like SITS can easily disturb the balance that has been struck in the system.***

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



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's<sup>4</sup>. 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.

***We suggest clarification of this point, since recommendation should not be considered as legislation. They are guidelines. The CoE may harmonise terminology but only in its own instruments and not striving to harmonise beyond that.***

### 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.

***Like Sweden, we strongly oppose this interference with national law. The need for such drastic action has not been proven***

- 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.

***See comment before. Furthermore we do not like to see here terrorism is added.***

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

***We do not want to give such a wide mandate***

### 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.

***We miss in this part the recognition that the needs may differ from country to country and therefore suggest adding taking into account the variation in need of CoE Member States.***

### 2.3.3. Specific actions

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

***We do not want to give such a wide mandate***

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

***We strongly support including this aspect in the action plan and we would like to give this some priority since this is the least developed area. We suggest however to add prevention as a topic.***

### 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.

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

#### 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.

#### **Prevention should be included**

- 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.

#### **We do not want to give such a wide mandate**

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

**We all know that seizure but foremost confiscation is very difficult in practice, while at the same time it could be an effective instrument in fighting organised (and other) crime. More effort should go into this subject. The PC-OC could also be used as a forum to exchange best practices on confiscation at the national level, since improving that will also help to improve international cooperation.**



management of assets once they have been seized and confiscated. An effective management system would ensure that these assets do not lose their value.

**Contrary to Germany we do not see a need for special focus on procedural rights, since those are already embedded in the legal framework.**

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.

**We do not understand the notion of regimes, but we do not want harmonising measures other than through the existing instruments. We all know they provide an adequate legal framework.**

#### 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.

**We do not want to give such a wide mandate.**

### **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.

**Like Germany: add TC-Y**

#### **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.

**Substitute "reduce" by: put an end to or avoid**

### 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.

**Here a clear link should be made with UN activities in this field.**

Specific actions to be taken:

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

**We do not want to give such a wide mandate.**

## 4. Implementation and follow up

**We have serious problems with a fixed period of 5 years as stated above.**

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.

**Although the emphasize seems to be on own activities of the Member States, we want to state that we are neither prepared to fill out more questionnaires nor to respond to programmes of evaluation**

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.

**Delete “based on that evaluation” and add “where appropriate” after set up.**

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.

**We are not prepared to be bound in this way.**

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.

**This is too vague**

#### **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.

**We will not be prepared to do so, given also the ongoing discussion within the UN on evaluation etc..**

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.

**Who is going to finance this.**

## **RUSSIAN FEDERATION**

### **Reflection Document for an Action Plan on Transnational Organized Crime**

#### **Comments of the Russian Federation**

Currently the Draft Reflection document (hereinafter – “Draft”) contains a range of problematic provisions that require rectification.

First and foremost, as a general Comment, the Russian Delegation would like to point out that the specific measures, aimed at achieving the goals listed in the White Paper on Transnational Organized Crime (TOC) are not set out in the Draft. Instead, it contains a general provision to the effect that such specific measures will be formulated by a Working group created specifically for that purpose. The Russian Side is of the view that such vague provisions can be detrimental to the achievement of the goals of the White Paper and are thus inappropriate. In this regard it is necessary to include provisions regarding the competence, functions and activities of the Working group into the Draft.

Furthermore, the Russian Side is of the opinion that concrete tasks and measures aimed at combating TOC must be determined before any obligations on the implementation of the White Paper are imposed. This makes the elaboration of the mandate of the Working group all the more important.

In addition to aforementioned general comments there are some remarks on specific provisions of the Draft.

1. Considering that not all Member-states have signed and ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (CEST №: 182) it is proposed to exclude para. “v” of section 2.1.2 (page 4) of the Draft.

2. In order to bring the language of the Draft with that of the White Paper<sup>\*</sup> we propose to make the following alterations in section 2.3 of the Draft:

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<sup>\*</sup> See subitem “a” of para. 3.3.1 of section 3.3 of the White Paper

### ***"2.3.1 Introduction***

*17. In relation to the implementation of witness protection programmes it is clear that witnesses play key role in the investigation, prosecution and adjudication of TOC [...]. The White Paper considered that there are enough legal instruments in this area and that the focus should instead be on their ~~practical implementation~~ evaluating whether these tools are properly implemented".*

3. To make the following changes in section 4 of the Draft:

### ***"4.1 Introduction***

*37. The governments of CoE Member States ~~have the primary responsibility for take~~ into consideration the possibility of implementing these policies at a national level under each action line.*

### ***4.2 Implementation***

*42. Member States ~~should have a responsibility to take~~ into consideration the possibility of establishing a timeline, in line with the 5-year CoE Action plan, to develop the measures outlined and to prioritise the implementation of these measures.*

### ***4.3 Follow-up***

*45. The Governments of CoE Member states ~~have primary responsibility for the~~ take into consideration the possibility of 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".*



## SWEDEN

Page 4:

### 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. iv. 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. v. To create better trained / well-trained legal professionals with specialised knowledge of international co-operation.

**Comment [NH1]:** The harmonisation of national legislation does not belong in this context. The CoE has not set criminal law standards relating specifically to TOC. Furthermore, the Action Plan is not the right place to sow the seeds of possible future standard-setting activities. This is a practically oriented project that should maintain its focus on concrete actions.

Page 5:

### 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.

**Comment [NH2]:** The objectives should be limited to a uniform understanding between Member States. In addition, the future overview of the recommendations Rec(2005)10 includes similar elements and should hence be amended accordingly.

#### 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.

**Comment [NH3]:** The concept of implementing policies is supported by Sweden since it gives Member States the discretion to develop and strengthen their cooperation and efficiency in different ways. At the same time, Sweden has some substantial concerns regarding harmonisation efforts, since such measures risk to become counter productive. This is further developed below and elsewhere in this document.

##### 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~~ ~~may~~ ~~start~~ with an evaluation ~~evaluate~~ 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 ~~can, if deemed necessary, (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~~ ~~may~~ 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.

**Comment [NH4]:** The implementation of this Action Plan will, as the text below is currently drafted, entail a considerable workload for Member States, without the added value having been made entirely clear. Moreover, for some Member States, the proposed actions may overlap with measures carried out in the context of other international bodies. Hence, Sweden wishes to limit the scope of the implementation as outlined below.

**Comment [NH5]:** This provision should be facultative and should in any case not include legislative measures, since that area is mainly not included in the Action Plan as such.

**Comment [NH6]:** The suggested amendments are motivated by the same comments as outlined above.

**Comment [NH7]:** Sweden is not convinced that a mandatory translation into the Swedish language of the Action Plan is necessary given the resources required for that. Moreover, it could be questioned whether it is necessary given the fact that stakeholders may be professionals with good knowledge of English. We therefore insist, as stated already before, to make this provision facultative.

##### 4.3. Follow-up

45. The governments of CoE member States ~~to be given to~~ ~~should~~ have the primary responsibility for the follow-up 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.

**Comment [NH8]:** In line with the general remark under the previous point, Sweden suggests shortening and clarifying the text under this point.

**Comment [NH9]:** Each Member State must have the prerogative to forward any information it sees fit. The last sentence is therefore not needed.