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AD HOC DRAFTING GROUP ON TRANSNATIONAL ORGANISED CRIME

(PC-GR-COT)

DRAFT

WHITE PAPER

ON TRANSNATIONAL ORGANISED CRIME

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1. Introduction

1.1 The Council of Europe and Transnational Organised Crime

The first problem when addressing the issue of transnational organised crime (hereinafter TOC) is to agree on what is meant by organised crime and transnational organised crime. There are numerous definitions and scholars are discussing whether the term should be used only for mafia-type criminal organisations or for any kind of criminal structure where more than three persons act in a co-ordinated way. The same occurs with the meaning of transnational.

For the purpose of the present document ("White Paper") we have adopted the definition of an "organised crime group" contained in CoE Recommendation REC (2001)11 concerning guiding principles on the fight against organised crime, which is the same as the one contained in the UN Convention against TOC (UNTOC).[1] As for the notion of "transnational", we use the definition of the UNTOC.[2]

TOC poses a direct threat to the internal security of all Council of Europe (CoE) member states (MS). By its very nature, this kind of crime, mostly transnational in character, typically cannot be efficiently suppressed by each state on its own. Instead 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, e.g. the UNODC, Interpol and the European Union (EU), have already proven their worth. However, a truly pan-European framework and a common strategic approach by all European states to tackling transnational and organised crime is arguably still lacking.

TOC contributes significantly to undermining the rule of law and compromising the integrity of democratic institutions. It has also a negative impact on national economies. 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 which can undermine the credibility and competitiveness of a state's financial and commercial sectors.

On the other hand, criminal organisations and individual criminals, from both within and outside Europe, have been making a steady progression demonstrating their ability to forge

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[1] "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".

[2] "(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".

alliances and operate across borders in all parts of Europe, thus further complicating the detection work and subsequent criminal prosecution in individual member states.

Since 1958 the CoE Committee dealing with Crime Problems (CDPC) has contributed to the development of international criminal law, drafting a number of important legal instruments in the fight against transnational and organised crime. 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 CoE for the years to come.[3]

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 CoE to engage specifically in this problem. However, this argument is unfounded: The fight against TOC is so complex that it needs to summon all possible efforts in combating it from all possible perspectives and resort to those actors that are the best placed with regard to the needs identified. The CoE, and in particular the CDPC, is uniquely placed and well-established in the field of criminal law co-operation and can contribute 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 CoE activities should be compatible with, and complementary to, those already developed and approved by the United Nations and the European Union, to cite only two of the most important organisations which are very actively involved in the fight against TOC.

In this field, as in many others, the co-ordination and the distribution of tasks is essential in order to avoid overlapping components and activities that would render the end result inefficient.

CoE monitoring bodies are capable of addressing the many-facetted issues related to transnational and organised crime in a pan-European context.

1.2 The White Paper process

The threat of TOC is becoming an increasingly important issue in many CoE member states, and thus for the CDPC[4], with concerns on a number of different levels.

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

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[3] The programme line on Money Laundering (MONEYVAL), Terrorism, Cybercrime, Trafficking in Human Beings (GRETA), 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 CoE will pursue its active partnerships with other international organisations including UN, UNODC, OECD, FATF, EU, OSCE and OAS (…).

[4] Set up in 1958, the European Committee on Crime Problems (CDPC) was entrusted by the Committee of Ministers the responsibility for overseeing and coordinating the Council of Europe's activities in the field of crime prevention and crime control.

In March 2012, the Bureau of the CDPC approved the above-mentioned draft terms of reference and instructed the Secretariat both 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.

a) Terms of Reference

Following the terms of reference, the principal aims of the Ad hoc Drafting Group were:

- the identification of relevant and emerging transnational organised crime 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 transnational organised crime;
- the collection, assessment and exchange of best practices in the prevention of, and fight against, transnational organised crime from all Council of Europe member States; and
- the preparation of a White Paper for consideration by the Committee of Ministers, after validation by the European Committee on Crime Problems (CDPC), on selected trends and developments in transnational organised crime in the Council of Europe member States which may be considered as priority areas, focusing on developing an integrated strategic approach to combating transnational organised crime 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 European Union, and the previous work of the Council of Europe in this area.

The expected result was the preparation of a White Paper on selected trends and developments in transnational organised crime in the CoE member states 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 CoE in this regard. The terms of reference required the PC-GR-COT to have completed its work by December 2013.

b) Composition of the Committee

The Ad hoc Drafting Group was composed of 12 representatives of member states of the highest possible rank in the field of transnational organised crime, criminal law and criminology, designated by the CDPC, and one scientific expert with established expertise in the same field, appointed by the Secretary General.

It consisted of representatives from Azerbaijan, Bosnia and Herzegovina, Croatia, Czech Republic, Denmark, Germany, Greece, Italy, Russian Federation, Serbia, Spain and Turkey. Representatives from the following CoE monitoring bodies (Committee of Experts on the Evaluation of Anti-Money Laundering and the Financing of Terrorism (MONEYVAL), Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC), Committee of Experts on Terrorism (CODEXTER), Convention

Committee on Cybercrime (T-CY), Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (Pompidou Group), Group of Experts on Action against Trafficking in Human Beings (GRETA), Group of States against Corruption (GRECO)) as well as participants from Mexico, the European Union and I.C.P.O. INTERPOL took part in the meetings at their own expense.

The participation of, for the most part, the chairpersons of the CoE monitoring bodies as well as of the main international actors in the field of transnational organised crime revealed a confidence that the CoE, because of its normative foundation and its wealth of experience, was well placed to take a timely initiative. Moreover it generated a vast repertoire of suggestions on the content of the White Paper itself.

Ms Lorena Bachmaier Winter (Spain) was elected chairperson of the Ad hoc Drafting Group. Mr Michael Levi was appointed as scientific expert to assist the group.

c) Working methods

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

The Ad hoc Drafting Group considered some good examples of judicial co-operation in criminal matters such as the European Judicial Network (EJN) as well as 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.

In the light of the discussions, the PC-GR-COT identified and agreed upon the different areas to be further developed in the White Paper, in particular enhancing mutual legal assistance and international co-operation in criminal matters; addressing issues regarding the confiscation of proceeds of TOC, as well as shortcomings in witness protection programmes; and improving special investigative measures as well as the synergies between the administrative authorities and criminal law units.

The Ad hoc Drafting Group held its 2nd meeting 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 meeting held from 2-5 December 2013, before transmission of the White Paper to the Committee of Ministers for adoption.

1.3 Legislative and policy activity related to organised crime as a transnational phenomenon

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 also the problems arising from its essentially transnational dimension, many measures at European level had already been taken prior to 2013, starting with the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation on the Proceeds from Crime (CETS N°141) and the first EC Money Laundering Directive of 1991, and now including, *inter alia*, the following in the EU alone:

- 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 European Union', 98/733/JHA of 21 December 1998
- Council decision of 8 December 2000 on the signing, on behalf of the European Community, of the United Nations Convention against transnational organised crime and its protocols on combating trafficking in persons, especially women and children, and the smuggling of migrants by land, air and sea. 2001/87/EC. OJ L 30 of 01/02/2001
- 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 N198 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
- Stockholm Programme on freedom, security and justice and the Action Plan on Implementing the Stockholm Programme' (COM(2010)0171)
- 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
- The Special Committee on Organised Crime, Corruption and Money Laundering (CRIM) was set up in March 2012 in addition to the already active institutions, such as, Europol and Eurojust. (It has now ceased operation).

It is plain to see that this constitutes a constantly evolving arena of policy and action, and that policy alone may not always lead to changes in action 'on the ground'. The PC-GR-COT Committee 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.

1.4. The scope of the White Paper: focusing on efficient actions and responses

In drafting this White Paper special attention has been given to identifying in which areas the CoE should contribute to fighting TOC, what are the actions that can be carried out better or more efficiently by the CoE and what problems have not been addressed specifically by other international or supranational organisations. Simply stating that the CoE should undertake initiatives in the field of preventing and combating TOC would not aid in addressing the problem and finding the needed synergies.

To this end, as explained above, it was essential to listen to the various points of view of the experts involved in combating TOC, to make sure the committee understood the real gaps, in plain words, what is happening in practice and what problems the practitioners encounter. Rather than discussing issues that are well known with regard to organised crime and its transnational implications, the aim was to find out what can be done by the CoE; what would

be the priorities with regard to efficiency not only in combating crime, but in preventing these criminal organisations from undermining the significance of democracy; and how to do it. The experts main outcomes were :

1) 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. While there are perhaps some points which require legal action at a multilateral level, in general this does not appear to be the case.

2) There is a need to identify why there is no adequate application of the existing instruments. In particular, international co-operation at the police and judicial level should be examined.

3) As the Group was aware of the impossibility to make an analysis of all the existing problems in fighting TOC, it decided to focus on those which the majority considered as the most relevant and where the CoE could really play an essential role on a pan-European landscape.

4) In selecting specific areas, the Group decided to concentrate on the criminal response, and not on all the numerous multidisciplinary approaches in the field of prevention. This does not mean that the Group does not consider prevention as key, but due to the composition of this expert group and in view of the information gathered, it was decided to focus on improving the criminal response in a transnational setting (detection, investigation, prosecution, evidence, and recovery of assets).

5) Despite the efforts in defining the scope of the analysis of TOC in this White Paper, some of these areas are very broad, as is the case, for example, with regard to international judicial and police co-operation or the use of special investigative techniques. However, within those broad areas, the Group has endeavoured to identify problems in practice and priorities, in order to be able to make precise recommendations for a future action plan.

6) Although the Group identified numerous subjects in the field of TOC that could be retained in its work, there are only five topics developed in this White Paper: 1) The problems related to police and judicial co-operation; 2) The use of special investigative techniques; 3) The implementation of the witness protection programmes; 4) The need for increasing co-operation with administrative agencies as well as with the private sector; and 5) The essential role of targeting the proceeds of crime to discourage these types of criminality and to really improve the efficiency of the fight against criminal organisations that operate in a transnational setting.

7) What follows is built on the solid foundation of the CoE *acquis*. It takes into account the rich material received from the members of the Group. The large number of documents associated with the White Paper process is available on the CoE website.

2. Features, Trends and Developments in TOC

2.1 Difficulties in identifying trends in TOC

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 – the ‘crime’ and ‘harm’ bits.

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, technologies and human sources of knowing and tracking in our evaluations of what is altering. Sometimes things may seem worse only because we know more about what was happening 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 between CoE member states *and* in the penetrability of their targets are a constraint that we should appreciate.

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

Data is poor about most of these offences, which have large ‘dark figures’ of unreported and undetected crimes. Our knowledge of organised crime is unavoidably imperfect. Indeed that imperfection may even be desirable, since if it were perfect we might be living in a totalitarian society in which such crimes were officially tolerated because they were committed by or with the support of a ‘rent-seeking’ elite. Despite the absence of precise figures covering the number, impact and costs of organised crime within the pan-European area, there is a general recognition that, especially for illicit trade offences and others which are consensual or where becoming a victim is not easily recognised, recorded crime or prosecution rates are more an index of police activity than they are measures of the 'objective' scope and scale of any crime problem.

But (a) trends in crimes, and (b) trends in how they are organised are connected issues that we must try to combine, using official sources, academic sources and investigative journalism/other civil society sources.

2.2 New trends identified in TOC

Over the last few years we have witnessed the emergence of more and more new 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: 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, rubbish, various counterfeit goods and even human beings. The pursuit of these new criminal targets and their transfer from the country in which they are produced to their final destination is a generating factor of this new dimension;
- institutional and political developments, particularly the abolition of external borders among 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 circulation not only of people, but also of illicit money gained through crime (the proceeds of crime), for which it is vital to find a secure placement for money laundering.

As to the latter, it is common experience to find out that criminals are becoming more affiliated with each other, discovering 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 carry 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, sometimes sophisticated, sometimes quite essential, in order to pursue a programme which goes beyond a single crime, and where it is instrumental to gain profit for the members of the group.

The described new patterns of the modern criminality can easily be found not only in practical experience, but also in the reports of law enforcement and judicial authorities, in data collected at national and international level, and from analyses available at EU level. Europol’s strategic report, the 2013 Serious and Organised Crime Threat Assessment (SOCTA), 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 be transposed at the level of the CoE. 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 between national law enforcement agencies, EU institutions, EU agencies and other relevant partners in the fight against serious and organised crime. According to this source of analysis “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, the 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 (MTIC) fraud, the production and distribution of counterfeited goods, cybercrime and money laundering are the particular crime areas listed in this category.

Furthermore, the 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. 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 mechanisms to exchange information and co-ordinate operational activity. These can be proposed also for the CoE and should be politically unproblematic for those member states who have ratified the Palermo Convention.[5]

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 phenomena of TOC in the EU has a clear and direct connection to the criminal organisations operating in the neighbouring states. And the criminal organisations operating, for example, in drug trafficking in the EU are also active in many of the CoE 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 offences relevant when analysing TOC.

There has been no forum or mechanism for gathering data about organised crime trends in all of the CoE member states since 2005, when the last of the CoE annual organised crime situation reports was published.[6] Therefore in the absence of a comprehensive study of the phenomenon in the CoE region, the findings, research and analysis done within the EU might be used in the development of this White Paper.

On the other hand, it has been suggested that a future CoE Action plan on TOC should not be too preoccupied with only focusing on emerging or new threats. Many of the threats are long-standing 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 Main features, needs and general assessment on TOC

The main factors affecting the status of organised crime in a country are: globalisation, the country’s economic situation, deficiencies in the national law, society’s attitude towards

[5] An interesting approach is mentioned in the Transnational Organised Crime Threat Assessment, elaborated by the United Nations Office on Drugs and Crime 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 illicit money), rather than solely targeting organised criminal groups.

[6] The PC-GR-COT Scientific Expert prepared that report on economic crimes in Europe, and also worked on the earlier ones. The reports, 1996-2005, are available at http://www.coe.int/t/dghl/cooperation/economiccrime/organisedcrime/.

crime, socio-cultural degeneracies, technological changes, visa free regimes, the customs union, and the capacities of law enforcement and judicial authorities. The current economic crisis and political circumstances (Arab Spring) have had an impact on transborder criminality in the CoE region.

1. Every criminal act places a burden on society. But when it comes to TOC, which has the capacity to penetrate into 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.

2. Organised criminal groups have both local and transborder dimensions, not only with regard to their composition and modus operandi, but also with regard to the activities they carry out and their consequences.

3. Technological advancements not only facilitate transnational organised criminal acts but also give way to 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 the law enforcement agencies.

4. 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.

5. The proceeds of crime obtained through criminal activities are the essential strength of criminal organisations. Criminal groups penetrate into 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, construction are some of the sectors that are vulnerable to infiltration by organized 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.

6. The corruption of the authorities by means of bribing or purchasing the services of public officials is a common feature of organized crime activities: Politicians, bureaucrats, members of 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.

7. Fighting TOC is a process that needs a broader approach than fighting ordinary crime. This means that the matter has to be prioritised not only by lawmakers and public authorities but also the whole society including NGOs, press and media organs, universities, trade unions and the private sector.

8. In combating TOC, a preventive approach should be accelerated to minimise the gaps and opportunities in the administrative, social and economic area, which could give the criminal groups the possibility to exploit 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. The media's and public's support against corruption and organised crime is crucial.

9. This perspective should include measures minimising the effect of organised crime, preventing its recurrence and protecting its victims. Article 31 and the following articles of the UNTOC show methods of prevention.

10. A decisive response from the criminal justice system to organised criminality is another essential component of effectively addressing this problem. Here, specialised agencies and units, qualified manpower, technical capacity, sufficient budgetary resources and smart tools from criminal law should be underlined.

11. The definition of participation in an organised criminal group in criminal legislation is not always consistent with the standards set by the UNOTC. This hinders the application of criminal measures at a national level and also as far as co-operation with other countries in organised crime cases is concerned.

12. The application of special investigative methods – such as audio and video recording of events taking place on private premises, wiretapping, undercover operations, storefronts, use of informants, undercover agents and controlled delivery –, under certain circumstances defined by the law, may be considered necessary.

13. Witness protection is also an important way of accessing invaluable evidence concerning organised crimes. However, the victims of the crimes often hesitate and refuse to give a statement against the criminal groups. Therefore, witness protection units should be equipped with more effective legal and technical tools.

14. A balance should be achieved between personal privacy and public interest. If investigative methods are not used properly, they could cause damage to persons who are not actually involved in the criminal activities. This applies to all the traditional investigation measures including apprehension, arrest, house seizure, etc. that can be applied during the investigation.

15. The response from the criminal justice system should cover reactive action from the law enforcement side which generally begins after the crime has been committed and proactive response which tries to predict the future steps of a criminal group.

This issue should be discussed with a number of questions such as:

- what kind of data or database should be accessible to the police?

- what should be the power and capacities of the law enforcement agency before the involvement of the prosecutor in a case against a suspected criminal group?

- can special investigative methods be used before a criminal case is opened by the prosecutor?

- what is the link between preventive investigative methods and criminal investigative methods?

- what are the limits in gathering, processing, analysing and storing data in the prevention of organised crimes?

16. Good co-ordination among the various national agencies is needed. Only workable and active co-ordination among the relevant agencies at national level can ensure that the existing resources are used efficiently. This is closely related to building strong mutual trust and a culture of collaboration among the law enforcement authorities and judicial bodies. It leads us to the multidisciplinary approach which puts the different professional knowledge and experience together in investigating and prosecuting a case successfully. Limits for sharing information and the legal basis for co-operation and co-ordination between agencies should be identified. Moreover, if there is more than one law enforcement agency in the country, their duties and responsibilities should be governed by the same basic rules and regulations.

17. Further co-operation and mutual assistance is needed between countries in increasing the flow of information between police agencies. Also legal assistance between judicial bodies is indispensable.

18. Exchange of information, experience, expertise, and joint training programmes for the law enforcement agencies should be strengthened. The relevant legal framework should be implemented (international conventions, bilateral agreements and national laws regulating co-operation methods and procedures between competent authorities).

19. There should be international co-operation and information sharing among the police agencies: Interpol; Europol; police liaison officers; direct co-operation channels should be established through bilateral agreements. Bilateral co-operation agreements should be enhanced.

20. The components that shape the quality of international joint action and information sharing are data protection regimes, mutual needs, proximity of criminal procedure law, reciprocity, personal contacts and sometimes language. Some countries need to improve their data protection regime in order to receive personal information from other countries for police purposes.

21. At the beginning of 1990's, a limited number of countries started to send drug liaison officers to exchange information with their foreign counterparts in a rapid and secure way and to create a positive atmosphere for joint work on disrupting the drug trafficking networks. Since this mechanism proved to be effective in producing concrete results, its scope was widened both in numbers and content. In other words, drug liaison officers were transformed into police liaison officers dealing with all kinds of cross-border crimes.

22. More efforts should be made towards investigating organised crime from a financial perspective as well as monitoring, confiscating and seizing the proceeds of crime owned by criminal organisations. It should be considered to what extent the national confiscation regimes might include a 'reversal of the burden of proof' in cases of organised crime, given that sometimes it is very difficult, indeed sometimes impossible, for the prosecutor to establish a link between the origin of the defendant's assets and criminal activity.

23. Another important aspect in the combat against TOC is the need to set international standards and procedures for asset sharing among states.

3. Identified key areas

3.1 Enhancing Judicial and Police Co-operation through the establishing and widening of networks

a) Combating complex criminal organisations with new models of networking

One of the clearest ways of enhancing efficiency in the investigation of complex forms of TOC involves setting up judicial and police networks, to foster the swift co-operation, the understanding of the transnational dimension, the co-ordination of the intervention, the execution of requests and to overcome the legal diversity among the different member states involved in a TOC investigation.

The co-operation between the member states of the CoE should follow the path already laid down in sub-regional and inter-regional European, Eurasian and Euro-Atlantic specialised organisations, exemplified in the models of the Eurojust networks (European Judicial Network, Genocide Network, Joint Investigation Teams Network), the European Police Office (Europol), Police Cooperation Convention for Southeast Europe, the Ibero-American Network for International Legal Cooperation (Iber-RED), the Office for the Coordination of the Fight Against Organised Crime and Other Dangerous Types of Crime on the Territory of CIS Participant States (BKBOP), GUAM[7] Virtual Law-Enforcement Centre (VLEC), the Central Asian Regional Information and Coordination Centre for Combating the Illicit Trafficking of Narcotic Drugs, Psychotropic Substances and Their Precursors (CARICC) and some others.

Obviously, the level of co-operation in some of these organisations is quite high, usually in parallel with the level of co-operation or integration at the political, economic and humanitarian level. Typically, this is a consequence of the membership of these countries of broader institutional associations, such as, in particular, the European Union, the Ibero-American General Secretariat and its Council of Ministers of Justice or the Commonwealth of Independent States, which in fact predetermined the level of law enforcement co-operation that has been achieved in the framework of the above designated institutions.

b) Networking at the EU level: Eurojust and Europol

Liaison magistrates are appointed to create a direct link between the judicial authorities of the home and host member states to facilitate and accelerate co-operation in the treatment of mutual assistance or extradition procedures. Furthermore, on the basis of the Action Plan against "organised crime", as approved by the European Council on 17 June 1997 in Amsterdam, the European Council created the European Judicial Network (EJN) in 1998.[8]

[7] Organisation for Democracy and Economic Development
[8] OJ C 124/01, 3 May 2000.

The tasks of the EJN on criminal matters are similar to those of the liaison magistrates' functions: accelerating the exchange of information and evidence between national authorities in fighting TOC; promoting co-operation by establishing links between the contact points of the network and facilitating the understanding of the different EU legal systems, particularly at a procedural level.

Eurojust, created in 2001, constitutes the first European judicial unit in charge of co-ordinating and promoting co-operation between member states in relation to criminal justice. Bilateral co-operation represents the majority of the activities of Eurojust, and its Case Management System (CMS) encourages the exchange of judicial information between its members and national judicial authorities, a very useful tool in EU co-operation on organised crime investigations. In the action plan implementing the Stockholm Programme the Commission stated its intention to propose Eurojust powers to directly initiate investigations.[9] These proposals would make Eurojust's internal structure more efficient and involve the European Parliament and national parliaments in evaluating Eurojust's activities.

An operational agreement on closer co-operation between Europol and Eurojust was signed in October 2009 and came into force in 2010. The goal of co-operation is clearly stated in the Action Plan Implementing the Stockholm Programme: "EU agencies and bodies such as FRONTEX, Europol and Eurojust, as well as OLAF, have a crucial role to play. They must cooperate better and be given the powers and resources necessary to achieve their goals within clearly defined roles".[10]

Co-operation between national authorities and Eurojust and Europol was also identified as problematic by a European Parliament report from 2009. According to interviews conducted with French, Belgian, Dutch and Italian magistrates and members of national law enforcement bodies, most of them remained "alien" to pan-European issues. Exchange of information has been a problem too, as has the reluctance of national members of Eurojust to ask national authorities to open investigations.

c) Other interesting models of co-operation

As an example of the CoE's initiatives in setting up the network-type system within the CoE member states and even further is the Convention on Cybercrime, signed in Budapest 23.11.2001. Article 35 "24/7 Network" of this Convention sets out the following provision:

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;*

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[9] COM(2010) 171, 20 April 2010, p.18.
[10] Id. p. 6.

c. the collection of evidence, the provision of legal information, and locating of suspects.

1. 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.

2. Each Party shall ensure that trained and equipped personnel are available, in order to facilitate the operation of the network.

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.

The International Criminal Police Organisation – INTERPOL has quite a rich experience in carrying out network type of co-operation. Its global system of national central bureaux (NCB), which exist in over than 190 countries all over the world is an example of outstanding networking co-operation. INTERPOL's system of notices and diffusions is a well-known mechanism to assist national law enforcement agencies with concrete aspects of specific investigations. These international alerts are used by police to communicate information about crimes, criminals and threats to their counterparts around the world; INTERPOL circulates them on its secure websites to member countries at the request of a NCB or an authorised international entity. The information disseminated via notices or diffusions concerns individuals wanted for serious crimes, missing persons, unidentified bodies, possible threats, prison escapes and criminals' modus operandi. They contain two main types of information: identity details (physical description, photograph, fingerprints, identity document numbers, etc.), and judicial information (offence with which the person is charged; references to the laws under which the charge is made or conviction was decided; references to the arrest warrant or court sentence, etc.). Notices and diffusions can also be used by the United Nations Security Council, the International Criminal Court and international criminal tribunals.[11]

For instance, retaining and exchanging information on firearms that are known as lost, stolen, smuggled or trafficked is the target of the special network established within the ICPO recently. INTERPOL is currently developing a global database for this purpose (INTERPOL Illicit Arms Records and tracing Management System, iARMS). Authorized users could query the system and instantly determine whether a firearm that has been seized has been reported to INTERPOL by another member country. The INTERPOL Firearms Reference Table (IFRT) enables investigators to correctly identify a firearm – its make, model, calibre and serial number – which significantly increases the chances of identifying its ownership history when submitting a trace request. Finally, there is the INTERPOL Ballistic Information Network (IBIN); since every firearm leaves unique microscopic markings on the surface of fired bullets and cartridges; IBIN can identify links

[11] 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 during 2011(International Notice System – Interpol).

between pairs of spent bullets and cartridge cases within minutes, thereby helping forensic experts to provide police investigators with timely information about crimes and suspects.[12]

The well-recognised activity of the United Nations Office on Drugs and Crime (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 recently been established. IMoLIN has been 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 (AMLID), an electronic library, and a calendar of events in the anti-money laundering field.

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

d) Problems / Gaps identified in practice

Delays in execution of mutual legal assistance requests is one of the problems most often invoked by practitioners, together with the refusal to surrender nationals. Both of these problems do not lie with the lack of legal provisions, or a lack of ratifying the relevant conventions, but have to do with their practical implementation. What are the reasons for the execution of requests being delayed or for states not being willing to surrender their own nationals?

With regard to delays, the requested authority often does not consider the compliance of the letter rogatory as a priority: in effect, the requested authority does not know much about the case at the origin of the request. On the other hand, the performance indicators usually do not prioritise the execution of mutual legal assistance requests, therefore such acts are only dealt with once national cases allow them to be dealt with. Lack of awareness of the importance of co-operating in a swift manner is also to be seen in practice: requests for mutual legal assistance are still viewed as something that concerns the requesting state, and not a whole region. For example, some authorities still view the mafia criminality as an Italian problem, tending to underestimate the capacity to act in a transnational setting.

Attempts to transfer progressive experience and best practices from one international jurisdiction to another are already known. In particular, it is appropriate to recall the situation regarding the establishment of relations between Europol and the so-called third countries (non-EU states), including countries both within Europe (Bosnia and Herzegovina, Russia, Turkey, etc.) and outside Europe (Canada, Colombia, USA, etc.). Eurojust carries out a

[12] UNODC, Digest Of Organised Crime Cases. A compilation of cases with commentaries and lessons learned., Vienna 2012, pp. 70-71, 103-104.

similar practice. The case of the EU-Russia relationship in this regard could be an example of an identified problem[13].

According to the discussion paper "*The functioning of 24/7 points of contact for cybercrime*"[14], the main problem is the duration of the mutual legal assistance process. It usually takes six months or more to receive a formal response to a mutual legal assistance request. Considering that Article 16 (2) of the Budapest Convention asks countries to enact legislation for the preservation of specified data of up to 90 days (although with the possibility of extension) and that even countries with data retention regulations may require Internet service providers to keep data for six months only, this poses problems. Reasons include:

- limitations regarding the skills, knowledge and training of judges and to some extent prosecutors appear to have a direct bearing and delay the mutual legal assistance process: they have difficulties understanding cybercrime matters and are thus reluctant to open a case or issue search warrants.
- insufficient use is made of the possibility provided in the international agreements, as for example, establishing direct contacts between judicial authorities in urgent cases and efficient channels of communication (such as Article 15 of the European Convention for Mutual Legal Assistance in Criminal Matters (CETS No. 030) or Article 4 of the more recent Second Additional Protocol to this convention (CETS No.182)).
- the involvement of contact points in the process may often be too limited. In fact, it appears that sometimes the competent authorities for mutual legal assistance are not aware of the existence and role of a contact point.
- it is to be noted that not all contact points are sufficiently trained, resourced or available to assist competent authorities and facilitate the process.
- furthermore, the authorities for mutual legal assistance of many countries receive a large volume of requests and it is not always possible to see why a request related to cybercrime should be given higher priority than other requests
- another issue is that preservation requests are not always followed up by mutual legal assistance requests at all or not within a reasonable timeframe[15]. This creates major concerns for the requested contact points with regard to their interaction with Internet service providers and their readiness to co-operate in the future.

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[13] On the specific experience and problems identified in Russia when dealing with police and judicial cooperation, see the Annex 1.

[14] *"The functioning of 24/7 points of contact for cybercrime"*, Project on Cybercrime of the Council of Europe, Discussion paper, document prepared by the Economic Crime Division, Directorate General of Human Rights and Legal Affairs (DC-HL), version 2 April 2009, Council of Europe. It can be downloaded at: www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/documents/567_24_7report4public_april09a.pdf

[15] Article 29 (7) states that: *Any preservation effected in response to the request referred to in paragraph 1 shall be for a period not less than sixty days, in order to enable the requesting Party to submit a request for the search or similar access, seizure or similar securing, or disclosure of the data. Following the receipt of such a request, the data shall continue to be preserved pending a decision on that request.*

e) Possible action to be taken

Building up mutual trust and identifying mechanisms to improve the functioning of the existing mutual legal assistance instruments

In order to find solutions to overcome the problems identified in the application of the mutual legal assistance instruments, it has to be clarified why they do not work. Apart from the traditional sovereign functions of protecting their own nationals, the lack of political will and the lack of mutual trust plays an important role in this context. It is clear that in areas where the two or more states have a real willingness in co-operating, the co-operation works more efficiently. How to improve the political will in improving the co-operation in dealing with transnational organised crime should be one of the tasks of the CoE. To that end it is essential to identify patterns or models that promote the mutual co-operation. The reasons for different states to enter into a close level of co-operation, even only in certain areas, can be very diverse: they share the same values, they suffer the same consequences of those crimes, in the end, if both parties profit from the cooperation, they are more prone to co-operate. It should be made clear that in combatting TOC every state profits, because TOC is an expansive phenomenon, and in the end, affects every country in one way or another. But, regardless of the different reasons for co-operating, one element that is necessary is that the co-operating states and authorities must have mutual trust – or at least an acceptable level of mutual trust.

If building up mutual trust is one of the key areas within the EU, it is also relevant within the pan-European area. Even if the aim in this landscape does not go so far as to establish a single area of justice, the need for mutual trust in order to improve the mutual legal assistance is manifestly one of the areas in which the CoE is working and has to continue working: a certain legal uniformity, guarantees in the protection of human rights and an equivalent level of procedural rights and penitentiary conditions are pre-requisites for building mutual trust. The scope of activities is so broad, that we will not make concrete proposals in this regard, but only underscore the importance of raising awareness on the need to co-operate and continue working in the area of protecting human rights.

If the aim of building up mutual trust and establishing actions to achieve that goal might be seen as too general or too ambitious, the action of the CoE 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. In such an area a new model of co-operation could be proposed: instead of resorting to the classical mutual legal assistance instruments of sending letters rogatory, a more stable co-operation unit could be envisaged, with more frequent contacts among the specialised units dealing with the same type of crime.

The setting up of a network of judicial contact points: a Pan-EuroJust or links between CoE member states' judicial networks and Eurojust?

There is no doubt that direct contact between the competent judicial authorities and the support for their relationship is often a very positive model to be encouraged. These contacts are also supported by bodies having as their mission the aim to facilitate such relationships. For the EU we can refer to the experience of the EJN and to the liaison magistrates, who can improve the level of judicial co-operation, in speeding up the execution of requests for judicial assistance and in providing essential legal information on the foreign legal system

and the judicial authorities of the states concerned. Nevertheless, experience and practice shows that there is still a judicial necessity for an external authority to provide a special function: the co-ordination of investigations needed in proceedings against transnational crime.

On the basis of the experience of practitioners it can be said that stimulating and improving the co-ordination between the competent authorities of states dealing with investigations and prosecutions is one of more innovative and modern functions in respect of the traditional legal instruments of co-operation. This function will be more and more crucial in the coming years in light of the developments in transnational criminality described above.

In this regard the questions which can be addressed in framework of a White Paper might be: should this function also become essential in a wider international context? Can the EU model be exported to a wider international context?

The experiences of the EU Agencies like Europol, Eurojust, 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.

In this context, there are good reasons to explore and to recommend in the White Paper the setting up of a network of contact points, based on the model of the EJN and Iber-RED. In this regard the CoE Committee of Ministers *Recommendation Rec (2001)11 concerning guiding principles on the fight against organised crime,* as to the appointment of contact points at a national level, should be fully transposed and institutionalised. Indeed, such contact points could play a key role at CoE level in achieving the following goals:

a) a faster identification of the competent authorities to deal with a request for judicial assistance;

b) the simplification of the direct transmission of letters rogatory where so foreseen by international treaties;

c) institutionalised contact points could also play an operational role in order to favour the exchange of investigative information, and promote a proactive approach to the judicial co-operation process.

Of course the creation of such networks should be coherent with the existing framework, taking into account the bodies and the agencies already set up at a regional level, avoiding duplication of efforts and sparing resources and developing strategic and structural synergies with existing networks.

Should this network be put in place at CoE level, a central point should be considered and institutionalised as a reference point, whose action can be linked 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 JITs in certain areas of criminality. In other words the network could play a key role in order to have a more proactive investigative approach in investigations concerning organised criminal groups having transborder dimensions.

The experience of the contact points' network pursuant to the 2001 Budapest Convention on Cybercrime is a real example of this kind of co-operation under the auspices of the Council of Europe. 39 points are operating today (35 of which are based in CoE member states and 4 in non-CoE states) which are forming the 24/7 network of continued co-operation. It is noteworthy, that national contact points in this network are functioning within 13 non-EU countries and even within some states outside Europe. This precedent suggests the possibility of establishing a similar network (networks) for co-operation between national law enforcement agencies to deal with other criminal offences related to transnational organised crime or expanding the existing cybercrime network to deal also with TOC.[16]

Connecting existing networks

A major shortcoming characterising the current state of international co-operation in law enforcement is its geographical fragmentation. In this context the setting up of a pan-European network of legal assistance in criminal matters (from Lisbon to Vladivostok), where all 47 member states of the CoE could co-operate, should be further studied. The development of network co-operation could be based on agreements between currently existing networks. Building such a bridge is already in place in Europe. Europol, in this sense, has a certain experience: it entered into strategic agreements with the UNODC and with the World Customs Organisation, 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, as appropriate, on behalf of Council of Ministers of Internal Affairs of CIS, may establish and maintain working relationships with international police organisations.

[16] Competent authorities and points of contact for international cooperation. It can be downloaded at: www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/Documents/Internationalcooperation/Res_internatcoop_authorities_en.asp

3.2 Special investigative techniques (SITs)

a) TOC and the need of special investigative techniques: the growing role of ICTs in the investigation.

There is a variety of ‘special investigative techniques’ against organised crime. These include controlled deliveries; covert investigations; interception of communications (wire-tapping); bugging of premises; covert surveillance; covert storefront operations which appear to offer crime opportunities; undercover agents and informants.

Organised criminal groups take many counter measures while carrying out or preparing their criminal activities not to call the attention of the police. For instance when communicating they prefer face to face meetings. If there is too big a distance between them to meet physically, they use social networks like Facebook, Twitter etc. or internet based communication facilities like Skype, WhatsApp (Threema), Tango etc.

Some of the organised criminal groups use a tribal language which is spoken by only a small community. So, it becomes very difficult to understand the content of the conversations for the investigators. In this case good interpretation is effectively needed.

Therefore traditional methods of investigation are often inadequate because of the special structures and professionalism in organised criminal groups. That’s why special investigative measures are applied to penetrate the criminal groups.

To gather intelligence and information about the activities of a criminal group, it is necessary to resort to some of the special investigative methods based on the operational needs. Some techniques such as interception of communication or controlled delivery are generally used to understand the roles of suspects in a criminal group and uncover the whole structure.

As they are intrusive, the relevant procedure should be governed by a law which stipulates the requirements of using these methods. For instance the activity of an undercover agent or informant should not be provocative of a crime. The other contradictory issue is “remote access” to computer hard drives. When accessing a hard drive the investigators use Trojan or other small programmes without the knowledge of the user. These measures do not recognise any national borders. This cross-border nature may cause debates on the jurisdiction and sovereignty.

These special measures are expected to be introduced in the criminal procedure of the countries in the near future. So the legal framework with respect to transnational searches of electronic devices should be developed urgently.

One can argue that if these investigative methods aren’t used properly, they will infringe on the fundamental individual rights of the people who aren’t related to the criminal activities. It is actually true for all the traditional security measures including apprehension, arrest, house search, etc. that can be applied during the investigation. The real matter is to maintain the balance between personal privacy and public interest by preserving the criteria of proportionality and necessity.

Article 8 of the European Convention on Human Rights entitled ‘protecting private and family life’, sets out the criteria as follows: ‘Everybody has right to have respect for his/her private and family life, residence and communication’. So, using hidden technological devices for

intervening private communications and interception of communications needs to have the necessary legal requirements.

On the occasion that there are strong suspicions about perpetration and there is no opportunity for gathering evidence by using another method and when a delay can raise an issue then the communications of the suspicious or accused person can be detected, intercepted, recorded and the signalling information can be assessed by being pursuant to the decision of the competent authority. All the work to be done in this respect should be supervised and reviewed by the court.

As these kinds of measures are intrusive in nature, they are limited to a certain type of serious crime often committed in an organised and planned way by criminal groups. It is not easy to find victims to testify against these criminal groups. In this case, special investigative measures become the final effective remedy for such crimes.

In some countries' legal systems, these measures cannot be applied to the conversations between the suspect and certain individuals such as his/her lawyer and his/her close relatives. It sometimes hampers the investigations as the criminals tend to exploit the legal limits.

The use of special investigative techniques is already recognised by numerous international and regional bodies and national jurisdictions as good practice in countering organised crime. The UNTOC, which promotes the use of special investigative techniques, also emphasises the benefits of international co-operation and of sharing of expertise among state parties on special investigations.

The Council of Europe Convention on Cybercrime which is the most comprehensive legal framework to tackle cybercrime also envisages strong and fast co-operation among state parties as cybercrime, which has a strong transnational character, should be rapidly investigated due to the fact that traces and evidence in cyberspace can easily disappear.

But when a case requires international co-operation, differences in the law regulating the use of these techniques can become a source of difficulties. Generally, 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.

Sometimes inadequate national legislation on the use of special investigative techniques becomes a barrier to co-operation with the competent authority of another country. For instance if using an undercover agent to transport controlled goods is forbidden, then it is impossible for another country to conduct a joint controlled delivery if it involves an undercover agent as a courier.

Undercover agents who take part in the investigations sometimes need to go another country where the targeted criminal group has links. In these circumstances, the relevant countries should be able to co-operate in accordance with their national rules. Each member state could require that the foreseen activity of undercover agents from other state on its territory be previously notified to the authorities, including the agent's true identity.

In some countries the law allows not only undercover agents but also informants to infiltrate into a criminal group to gather evidence. In any case, the protection of the human intelligence sources should be guaranteed by law.

From a law enforcement point of view, having an undercover agent working with informants or intercepting communications is often not enough to understand the criminal links properly. Analytical tools and techniques are used to optimize the benefit of the information. By this method, the connections of suspects and their roles in the criminal organisations can be seen by analysing the data coming from various sources such as phone conversations, money transactions, past criminal records and other intelligence.

This effective response from the criminal justice system leads to a proactive law enforcement approach which allows the future steps of a criminal group to be predicted. In this way, many possible crimes and victimization can be prevented. In line with this approach, the intelligence and information gathered by the special investigative methods turn into an important source for criminal intelligence analysis. But more importantly, intelligence has a meaning and a value if it is shared in time with the relevant competent authorities.

Special investigative and preventive techniques require a high level of professionalism and expertise on the part of the judicial and law enforcement authorities. Thus specialised prosecution and law enforcement bodies become crucial in implementing these techniques in accordance with the law. In urgent cases, specialised law enforcement bodies need to get judicial authorisation very quickly. There needs to be good and fast communication channels between law enforcement and prosecutor services.

Sometimes law enforcement personnel having investigation duties may be assigned to administrative tasks to support other services, which may prevent the productive handling of an investigation and lead to an unhealthy communication between the prosecutor and the police. In this respect, it is important to keep the judicial personnel away from the other services such as protection duties at sports events, concerts, guard duties, patrolling, control duties and traffic controls to the greatest extent possible.

The other important point is that the law enforcement agencies have two main tasks. One is to prevent crime and preserve order in society the other is to investigate the crimes committed. So the title of special investigative measures usually falls under the investigative functions. But as the prevention of crimes is one of the main tasks of the law enforcement agencies, these measures can be applied provided that certain requirements are met. In many countries under certain conditions the special investigation methods could be used in the preparatory phase of criminal investigations, perhaps even before a specific crime has been identified.

b) Possible action to be taken

There are two parallel set of actions to be taken with regard to the fight against TOC and the use of SITs: 1) the efficient use of such techniques and 2) the strengthening of 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 the possibility to prevent abuse.

With regard to the first perspective, and in line with the UNTOC, CoE should make sure that there are sufficient training programmes provided to enhance the professional skills of law enforcement agencies, prosecutors and judges in applying special investigative methods

and mechanisms should be set up to ensure that personnel, specialised in the field of applying special investigative methods are not appointed to other units and are not commissioned additional duties outside of his/her main role. Perhaps carrying out training programmes in this field might be a too ambitious objective to be carried out by any organisation.

However, at least ensuring that in every member state there is a unit with the adequate training in dealing with SITs with regard to TOC, could be a first step.

Scientific and comparative research within the CoE landscape should be carried out to evaluate the efficiency of these measures and the level of harmonisation among member states. It could start with one single measure – for example on-line searches or electronic interceptions – and not only the legal framework for those measures, but also the practical application and the remedies against illegal encroachments on fundamental rights should be checked.

The study should pay special attention to the conditions for granting special investigative methods and whether the rules governing the gathering, processing, analysing and storing of relevant data are clearly defined by law and also applied in practice. Analysis should be carried out on whether the required legislation and the relevant specialised law enforcement units are in place, and if measures for the protection of human rights in a transnational investigation exist, in particular with regard to data protection and privacy.

While all these measures are relevant in order to combat any kind of serious crime, with regard to transnational proceedings and investigations, the use of SITs poses additional challenges: the admissibility of evidence in the forum state, and the protection of the defendant's rights against investigative acts carried out in a foreign country under different rules.

In the view of this Group, the CoE shall play a key role in defining "Principles of transnational criminal proceedings" to strengthen the defendant's rights in such proceedings, while promoting the efficiency of the investigation. The role of the ECtHR has been decisive in establishing common standards, but applying the doctrine of the margin of appreciation has not managed to set clear rules on the rights of defendants in transnational inquiries.

3.3 Witness protection and incentives for co-operation

1. Witness protection programmes

a) Legal framework

Witnesses may play a crucial role in the investigation, prosecution and adjudication of organised crime. 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 life and that of their relatives and other persons close to them is protected before, during and after the trial.

Being protected by law and the relevant institutions during criminal proceedings is a basic human right. Indeed, a testimony being given by a person in the capacity of witness before a court is obligatory. Bearing in mind this obligation, states are obliged to provide witnesses with the protection of all human rights that is guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Furthermore, Article 24 of the 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 organised criminal groups"* to supply information useful to competent authorities for investigative and evidentiary purposes.

The question of the protection for witnesses and persons collaborating with the judicial authorities was comprehensively dealt with by the CoE in *Recommendation No. R(97)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 intimidation, 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 the criminal proceedings.

The Committee of Ministers of the CoE adopted its Recommendation Rec(2001)11 concerning guiding principles on the fight against organised crime (2001) 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 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, the collaborators with the judicial authorities, the witnesses, the informers and, when necessary, the members of such persons' families. The measures required depend on the assessment of the risks such persons run. In some cases, for example, it will be sufficient to install preventive technical equipment, agree 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, further-reaching witness-protection measures such as a change of identity, employment and place of residence.

The Criminal Law Convention on Corruption of the CoE (Article 22) requires states parties of the Convention to adopt such measures as may be necessary to provide effective and appropriate protection for those who report corruption or give testimony about it before the court.

Also, the Committee of Ministers of the CoE 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. According to the abovementioned Recommendation, the CoE defines the term 'witness' to mean "any person, irrespective of his/her status under national procedural law, who possesses information relevant to criminal proceedings, including experts and interpreters." A 'witness at risk' or 'endangered witness' is a witness who is likely to endanger himself or herself by co-operating with the authorities, or a witness who has reasons to fear for his or her life or safety or has already been threatened or intimidated. In the Netherlands, the law refers to a 'threatened witness' – a legal category which opens up the possibility of testifying under conditions of anonymity. However some might exclude from such a category witnesses who are *likely to be threatened in the future*, although they have not yet been. Although the term is usually used in less explicitly criminal contexts such as primarily legitimate businesses and government functions, 'whistleblowers' might be witnesses at risk *if identified*. The CoE 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". This includes intimidation resulting from the "mere existence of a criminal organisation having a strong reputation for violence and reprisal or from the mere fact that the witness belongs to a closed social group and is a position of weakness therein".

b) Gaps identified in practice

In spite of the existence of exchange programmes, platforms and the CoE recommendation of 2005, it is important to evaluate whether these tools are properly implemented. However, there are no published studies that enable us to do this in a pan-European context or even in individual countries.

A decade ago, the *programme effectiveness* of European programmes was high, in the sense that not a single participant or relative of a protected witness had been victim of an attack by the source of the threat; "The effectiveness is underlined by the fact that there

have been attacks, some of them fatal, on relatives not participating in a protection programme and on witnesses who chose to leave the programme at a moment when the responsible protection agency did not consider the situation safe" (CoE 2004: 40). Exact figures on the number of convictions gained on the basis of statements made by protected witnesses were not available in any of the countries studied. The study noted (p.40): "successes in the combating of organised crime should not be attributed to witness protection measures alone but to the combination of a witness protection programme and a system of regulations concerning the collaboration of co-defendants with the justice authorities". On the other hand, the possibility of counting on such contributions and evidence is of paramount importance for the judicial authorities, because sometimes it represents the only tool available to discover the secrets and the structure of criminal groups. The experience of some member states (such as Italy) is decisive in the consideration of the protection of witness and suspects co-operating with success as a key factor for the final success of investigations against OCGs. Statistical evidence is available on this issue. The above-mentioned considerations are sufficient reason to conceive appropriate policy on this matter 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. The CoE (2004) study of best practices concluded that it is important to separate 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 protect the rights of witnesses. The independent agency is responsible for admission into the protection programme, protective measures, as well as continued support for the protected witnesses. Since the investigative agency is usually most knowledgeable about the criminal background of the applicant, the nature of the investigation, and the crime involved, the agency often assists the protection service in the assessment of the threat to the applicant and his or her immediate relatives. A later review of existing programmes in Europe identified three main necessary characteristics of agencies charged with implementing witness protection: (1) they must co-operate very closely with law enforcement agencies, using well defined protocols; (2) 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; and, (3) 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. Italy requires that witnesses reveal all information related to the case within 180 days. A 2001 law introduced this time constraint after which a state witness' information will no longer be considered relevant or usable. In Ireland, significant attention is paid to the likelihood that a witness' evidence will secure a conviction: it is assumed that a majority of witnesses are in some way involved with organised crime groups, so alcohol and drug dependencies are assessed in an effort to avoid cases where these might jeopardize the ability of a witness to remain in the programme in the long-term. The UN asserts that enabling legislation should make it a criminal offence to divulge protected information related to the programme 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 within the CoE context, no legal rights arise from protection contracts, nor do those on the programme even receive a copy of the contract, for security reasons. On average, the minimum length of the witness participation in a protection programme is 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.

Procedural measures - e.g. recognising pre-trial statements - are used to reduce the risk faced by witnesses. In most 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 highly important, since many Member States are too small to guarantee safety for witnesses at risk who are relocated within their borders”.

A recent overview for the European Parliament noted that in Belgium and Italy protection measures can only be used in case of specific crimes, while under Lithuanian legislation they may be used for "serious crimes". Whereas most member states have established one national or federal programme, some (e.g. Germany and the UK) run several regional or local programmes. As to the number of participants, there are few estimates available. For example, in 2005 there were about 5 000 participants in the Italian witness protection programme (more than 1 000 witnesses, together with almost 4 000 of their relatives), representing 91 people per million inhabitants. It is unlikely that any other CoE/EU member states comes close to this figure, since in Germany and the Netherlands, for instance, the number of participants in the same year was estimated to be between one and three people per million inhabitants (with about 650 people a year admitted to such programmes in Germany). As for their legal or institutional bases, in some countries, including the Czech Republic, Germany, Italy, and Lithuania, witness protection is regulated by specific legislation; but in other countries it is not[17]. In the UK, witness protection evolved out of police practice, but was given statutory footing in 2005. While in some countries, including Austria, Slovakia and the UK, witness protection is associated with the police, in others (e.g. the Netherlands) the programmes operate in the executive or the judiciary. In Italy witness protection programmes are implemented by the Central Commission, composed of the Under-Secretary of State at the Ministry of the Interior, two judges or prosecutors and five experts in organised crime; in Belgium, there is a Witness Protection Commission,

[17] For example Austria, Denmark, Finland, France, Greece, Ireland, Luxembourg, the Netherlands and Spain.

composed of prosecutors, high-level police officers and representatives of the Ministries of Justice and the Interior.

c) Possible action to be taken

It is obvious that there are different approaches of member states 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. We consider that the CoE should analyse this issue, try to find out why the witness programmes do not work as efficiently as they should in the realm of TOC and see if there is any special action that could be taken to establish measures to improve the transnational witness programmes. Until now it appears that the mechanisms exist, but there might be problems as to providing resources for locating a witness under protection abroad. Therefore, the CoE should take action in analysing the real impact of witness evidence in combating TOC, the number and quality of witness protection programmes, the shortcomings detected in their implementation and make an assessment on the grounds for the weak co-operation of insiders of criminal organisations in testifying against other members of the organisation. Of course, the reasons are known and clear: fear of the consequences for them and their families. But, in order to improve the functioning of the witness protection programmes, further analysis should be carried out. The study should include the following issues:

- Evaluation of the implementation of the Council of Europe Recommendation Rec(2005)9 on the protection of witnesses and collaborators of justice;
- Existence of a legal framework in member states of the CoE to protect witnesses in terms of whether there is a *Lex specialis* framework on witness protection or any other legal remedies to protect witnesses;
- Recruitment to formal programmes and conditions of maintenance;
- Rights of witnesses in witness protection programmes in the country in question and abroad (in case of relocation);
- Protection of personal data;
- Institutional capacities to protect witnesses/Special Witness Protection Units (operational independence, financial independence, human resources specialisation);
- Types of protection measures;
- Possibility of using a new or false identities;
- Legal possibility of relocation of witnesses abroad;
- Use of ICT in witness cross-examination;
- Existence of formal programmes in each member state and 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.

2. Incentives for co-operation

a) Problems identified

One of the issues that are central to the goals of investigating and combating transnational organised crime, as well as foiling planned criminal operations, is providing adequate incentives for the co-operation of persons who are themselves, directly or indirectly, participants in criminal acts and thus subject (potentially) to prosecution (so-called

"collaborators of justice").[18] Such persons sometimes possess invaluable knowledge about the structure, method of operation and activities of the criminal organisations to 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 the UNTOC (Article 26) and the UN Convention against Corruption (Article 37), which have an impact on all CoE member states, as well as the more restrictive EU Council Resolution of 20 December 1996 on individuals who cooperate 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* the 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 of 20 April 2005 –[19], 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 etc.), for depriving organised criminal groups of their resources and proceeds of crime and for recovering such proceeds.

Up until now, the nature of such motives and the possible steps to be taken for their introduction has been left to the discretion of the countries involved. Among the conceivable measures capable of furthering the goals of combating transnational organised crime, states parties are encouraged in particular to provide for the possibility of mitigating the punishment of or granting immunity from prosecution to persons providing substantial co-operation in the investigation or prosecution of a related offence, not only in the 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, which vary from state to state. In several CoE member states, however, there are no explicit policies or adequate legal provisions in place. More specifically, following can be noted:

- With regard to *mitigated punishments*, most states parties have measures of a generic nature in place (located usually in their Criminal Codes), permitting collaboration to be considered as a circumstance mitigating criminal liability and taken into account by the court during sentencing, i.e. at the stage of determining the perpetrator's individual punishment. The consideration of the co-operation of the accused has tangible effects only during deliberations and no assurances are provided to the interested party in

[18] See also UNODC, *Good practices for the protection of witnesses in criminal proceedings involving organised crime*, New York, 2008, p. 19.

[19] See also Recommendation R(97)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 CoE 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 record of protection measures applied separately for collaborators of justice.

advance. Acts of collaboration which may lead to a mitigated treatment (e.g. imposing a sentence below the minimum provided for as a rule for the respective criminal offence, or substituting a penalty, such as imprisonment, with a less harsh one, such as a monetary fine) include normally active steps which may have led to the detection of a criminal group, giving oneself up and confessing to a crime, exposing other accomplices, and also rendering assistance in the investigation and detection of criminal proceeds, as a form of repairing the harm caused or preventing further harmful consequences of the offence. The extent to which a lighter sentence will be imposed depends, usually, on the degree of co-operation of the particular defendant and the effect he/she had in reducing the harm caused by the offence, and is left to the discretion of the court. 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 transnational organised crime. 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 and summary prosecutions, as already used or being developed by a number of CoE member states (e.g. Azerbaijan, Estonia, Russia, Switzerland, the UK). Under the relevant arrangements, the defendant may have to confess to being entirely guilty of an offence, accept possible civil claims and not question the circumstances in the indictment, in exchange for a lesser charge or a reduced penalty. The court normally does not hold a regular hearing but pronounces the verdict based on the evidence collected in the pre-trial proceedings, confirming in effect (while retaining some degree of discretion at all times) the agreement between the prosecutor and the co-operating person's defence counsel. 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 the substantially wrongful behaviour of the co-operating person.

- Equally, with regard to granting *immunity from prosecution* (or to refraining from imposing punishment) to accused collaborators, several CoE 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 the possibility of making available to the competent national authorities at least the option of giving such an incentive to a co-operating person, should this be judged appropriate. Accordingly, it may be useful for states parties to explore manners to provide for some sort of immunity, including by increasing the discretionary powers of public prosecutors or by introducing special statutory provisions regulating the favourable treatment of co-operating persons in respect of charges of organised crime. Further matters to be decided in this context include whether and to what extent the law enforcement authorities should have discretion regarding the decision to grant immunity to the defendant in question (e.g. regarding the level of co-operation and the sincerity and value of the disclosures made by the co-operating person); taking precautions to curb possible abuses, such as providing for some form of judicial review to ratify the terms of immunity arrangements; issuing guidelines setting out in detail the principles of exercising the available discretion and serving to assist the competent authorities in deciding

whether the granting of immunity from prosecution may be appropriate in the interests of justice; safeguarding the public's confidence in the rule of law; protecting the rights of the accused, e.g. by ensuring that a conviction for belonging to a criminal organisation or for crimes committed by such are not based solely on the declarations of a collaborating accomplice, etc.

- Finally, it is important that the measures described above can also function in a transnational context, given the widely transnational character of organised criminal activity. Significantly, both Article 26 par. 5 UNTOC and Article 37 par. 5 UNCAC urge states parties to consider entering into agreements or arrangements between themselves, 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 criminal organisation member or to the author of a crime committed in an organised form, then it should be examined if the same treatment could also be made valid in courts of other member states.[20] Nevertheless, CoE 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 or seem to have no practical experience in their use.

b) Possible action to be taken

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 CoE 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 and pre-judicial co-operation agreements that may result in a mitigated punishment or in the dismissal of the case against the collaborator; and
- on 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 and urge for the adoption of effective, harmonized measures among member states in this field.

3.4 Administrative synergies and co-operation with the private sector

By administrative synergies we understand various forms of co-operation between law enforcement authorities on the one hand, and administrative authorities and private entities on the other. This is a key issue with regard to an efficient (preventive) co-ordinated action against transnational organised crime, 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 concealed financing of crime.

[20] See also EU Council Resolution of 20 December 1996 of individuals who cooperate with the judicial process in the fight against international organised crime, par. 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 of America), in Europe it is a relatively new phenomenon, dating back no more than five years. Despite this fact, administrative synergies are, in some form or another, present in most CoE member states, where law enforcement authorities are able to pool information from a variety of administrative authorities and private entities.

With the advancement of information and communication technologies, and as organised criminals become ever defter in their methods, and law enforcement authorities ever more in need of additional resources, administrative synergies emerge as the natural and cost-efficient extension of the powers that counter organised crime.

a) Legal Framework

The legal provisions governing the possibility of law enforcement authorities to mine 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 CoE.

In most CoE member states, the general 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 CoE member states require that a suspicion that a crime is being committed be reported, which also includes administrative authorities and private entities. Some CoE 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 (see below).

b) Existing Initiatives

Co-operation between law enforcement authorities and other bodies is generally encouraged in all documents pertaining to organised crime. The UNTOC stresses the importance of co-operation between law enforcement authorities and other bodies in several instances (most notably in Art. 1, Art. 7 (4) and Art. 31 (2a)).

The CoE, for its part, encourages co-operation in its Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 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, which was developed in concert with the Organisation for Economic Cooperation and Development, and which lays down the ground rules for co-operation and exchange of information in the field of taxes.

The most ardent proponent of administrative synergies to date has been the European Union. 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. These include the Stockholm Programme, the Internal Security Strategy, and the European Commission’s Communication on the EU Internal Security Strategy in Action.

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.

As has been stated above, in many CoE member states some form of administrative synergies 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.[21] 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.

c) Problems and Gaps Identified in Practice

Putting administrative synergies into practice on an international level is a daunting task. It requires flexibility and motivation, especially in an environment where many CoE 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 the 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);
- lack of motivation (e.g. where a law enforcement authority has no means of enforcing that a relevant body provides 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 neither is aware of this 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 futile).

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

- language barriers (e.g. in written correspondence as well 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);

[21] As per the Anti-Mafia (IT) and BIBOB (NL) legislations.

- lack of insider information (e.g. when the information required is not specific, it can be difficult to know which exact authority to turn to, or even what information could be required of what 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 long-standing 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, it is imaginable that, where the motivation is high, there are possibilities of involving administrative authorities and private entities based in different countries in a joint transnational investigation.

d) Possible action to be taken

The challenges outlined above should provide a guide to further action to be taken at both national and international levels. Speaking in general terms, it would be advisable that CoE member states focus on the following areas:

- the systematic promotion of administrative synergies, i.e. the co-operation of law enforcement and 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 especially applies to the sharing of information through existing and new databases;
- the increase in awareness of administrative authorities and private entities of their role in preventing and fighting organised crime, including providing training so as to give them specific tools with which to identify and report possible organised criminal activity;
- the promotion of transnational co-operation by informing liaison officers of the importance of administrative synergies and encourage exchange of information by providing contact information for national contact points (where applicable)

One of the most efficient means of tackling 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 CoE could initiate the creation of a central database banking account register for its member states with the aim of facilitating and speeding up exchange of information.

It is advisable that the CoE devotes further attention to administrative synergies within its own committees, with regards to specific forms of organised crime (e.g. CDPC, MONEYVAL, GRECO, T-CY).

3.5 Recovery of Assets

a) Problems identified

Criminal assets are a growing concern for many countries. It not only feeds corruption and organised crimes but also constitutes a reliable source for financing of terrorism. Proceeds of crime in substantial amounts provides not only economic power but also prestige and political influence to criminal organisations thereby increasing the severity of the threat imposed on society by such organisations.

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

This issue is still a concern as it has not been handled adequately. Vettori (2006, 2011) who, addressing the lack of quantitative and reliable data at European level to evaluate the effectiveness of the proceeds of crime confiscation, has proposed a model to explore the law in action as opposed to the law in the books.

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

Recently the issue of asset recovery has become one of the important components of anti-corruption and organised crime strategies. New legal instruments, initiatives and programmes have been introduced to tackle with the financial aspect of the crime.

The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the financing on Terrorism (CETS No. 198), the UNTOC and the United Nations Convention Against Corruption (UNCAC) are some of the binding instruments that provide a unique opportunity to mount a global and regional response to this problem.

There are promising initiatives to fill the gap in the area of information sharing and co-operation among the states. Europol's Camden Asset Recovery Inter-Agency Network (CARIN) and the StAR Initiative are examples of regional and international mechanisms that encourage co-operation between prosecutors and investigators.

But mutual legal assistance is still at the 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 the asset recovery investigations being conducted. 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 of them is to link the confiscation with the criminal conviction. In this case, even if it is probable that the assets of a suspect derive from a criminal offence and the owner or possessor is not able to provide evidence that the gain was acquired legally, 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 has been introduced as a model of civil law asset forfeiture which 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 OC, 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.

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 by 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. Money, commodities or other assets acquired before the criminal activity of the convicted offender began, cannot be confiscated unless the judge has factual evidence justifying a reasonable connection with the same criminal activity. 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 be confiscated as well.

But 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 the criminal proceeds. In many cases assets of organised criminal groups are held in the name of other persons, especially relatives or friends. Businesses are run by front individuals who have no criminal record.

Due to the increasing tools and choices in the financial sector, it is not difficult for the criminals to hide the source of the proceeds with the help of professional advice coming from economists, accountants and legal experts. Being financially motivated, these specialists use their expertise to launder money and place it in the legal economy.

Criminals are now taking advantage of the globalisation of the world's economy by transferring funds quickly by on-line banking, virtual casinos, auctions, smart-cards. They utilise legal shields as a way 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 isn't established well, it will be impossible to successfully start formal mutual legal assistance procedures to confiscate the criminal assets.

The organised criminal groups benefit from the insufficient co-ordination and 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 trans-border organised crimes is on the rise, there is still a lack of harmonisation related to criminal definitions, liability of legal entities and criminal procedural instruments.

Bank secrecy, the use of offshore companies, different priorities of the judicial and law enforcement authorities and lack of trust among them makes it harder to co-operate effectively. In some countries there isn't even enough political will to actively pursue suspicious financial transactions. At times of economic crisis, some companies and banks tend to ignore transparency and the available preventive measures against 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 both a regional and an international point of view.

The management and disposal of confiscated assets, which are important aspects of the overall process of confiscation, seems problematic for a number of countries. For instance the sale of the confiscated real estate, running a confiscated firm until its sale, selling food products before they are ruined are some of the problems that the asset recovery offices have to face on a day to day basis.

b) Possible action to be taken

- The freezing and confiscation of the proceeds of crime owned by criminal organisations should be at the top of agenda on the counter activities against organised crime..
- The actual results achieved in confiscating and seizing the proceeds of crime from criminal organisations should be reviewed by preparing an annual report in this regard.
- A central database of bank accounts should be set up at a national level.
- Specialised law enforcement authorities should be able to follow the money, access the financial intelligence and relevant databases (land register, property register, motor registration, tax registry, bank registers, financial information, etc.) to investigate promptly the preliminary indications of money laundering.
- Special training should be organised in order to increase the awareness of those who are in charge of combating such crimes for instance police officers 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.
- Fast seizure and freezing mechanisms should be established within the legal system to increase the success of asset recovery cases.
- An effective system should be established to manage the confiscated assets to make sure that that they do not lose their value.
- The confiscation regime should include 'reversal of the burden of proof' for organised crime cases to simplify the confiscation of criminal assets from major criminals.
- For the purpose of confiscation, the goods that are fictitiously registered in the name of third parties or which are possessed by intermediary natural or legal persons should be considered as being at the disposal of the offender.
- Investigations against organised crimes should be supported by a financial perspective to give the law enforcement agencies and prosecutors extra information to lead the investigation in the right direction which also facilitates the detection of illicit financial flows and criminal proceeds.

- It is crucial to 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.
- International standards and procedures for asset sharing among states should be set up 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.
- Criminal assets such as buildings and vehicles should be used for the benefit of the community such as for the purpose of compensating the victims and financing the social work.

4. Recommendations and proposals for future action

4.1 The combat against TOC requires co-ordinating efforts: the initiatives of the EU and the UN should be co-ordinated with the action taken by the CoE. TOC is not a regional problem, but a global problem. Initiatives taken in the EU need to be complemented with actions of the CoE, 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 CoE member states.

4.2 The monitoring task of the implementation of the Palermo Convention (UNTOC) should involve all stakeholders: the UN monitoring activities should be co-ordinated with the CoE initiatives in the CoE landscape.

4.3 The CoE has provided with numerous recommendations and conventions to deal with TOC. These instruments combined with the Palermo Convention, which has been ratified by all CoE member states, show that the priority is not to draft new legal instruments, it is in fact to identify to what extent national legal systems have implemented the CoE Recommendations and the UN conventions.

4.4 Identifying the reasons for non-implementation or non-practical application of the existing conventions: the CoE should further analyse what are the reasons for non-implementation or lack of adequate implementation of the existing legal instruments on combating TOC: if it is due to a lack of political will, a lack of mutual trust, a lack of resources, a lack of capacities, or a mixture of all these reasons. This is a first step towards designing comprehensive strategies and programmes.

4.5 There is the need for raising awareness on the problem, and unless there is co-ordinated action, the spill-over effect will end up having a negative effect on those countries where the efforts are less.

Enhancing judicial and police co-operation

4.6 The CoE should design an action plan to enhance mutual trust among the CoE member states, as this undoubtedly fosters the 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 CoE landscape.

4.7 The CoE should analyse to what extent the legal framework on TOC is harmonised in the CoE area and if the existing divergences represent a significant obstacle in co-ordinating efforts and providing efficient co-operation. If such divergences exist, the CoE should analyse if there are certain areas where harmonisation or compatibility of legal provisions could be sought.

4.8 The MLA conventions provide an adequate legal framework to enable efficient co-operation, however their application is still not satisfactory. The delays are unacceptable for an efficient criminal justice response, and in a technologized society those delays will render the prosecution and the recovery of assets impossible. Practical measures to overcome the existing delays, to avoid ungrounded refusals and to establish mechanisms to prioritise the co-operation in the fight of TOC, should be further studied.

4.9 The evolution of the international co-operation model from traditional requests for MLA towards close co-operation and the co-ordinated on-going parallel of joint investigation (as indicated in the Digest of UN Convention 2012) in certain criminal areas, should be fostered by the CoE.

4.10 The CoE should promote the connection of existing judicial and police networks within a pan-European landscape. A unit representing non-EU and CoE member states in Eurojust, for co-operation in certain areas of TOC, could be studied further. Promotion of co-operation agreements and memoranda of understanding should be supported if the guarantees for the protection of human rights, and specifically for data protection and privacy rights, are safeguarded.

4.11 The establishment of a judicial network with contact points in all CoE member states should be studied. The model set out in the Cybercrime Convention could be analysed in the context of TOC. Some countries does not have any law enforcement or judicial body responsible to respond to organised crime and, instead, have a nimber of different agencies to combat corruption, money laundering and/or other forms of crimes. The CoE should examine the need for a mutual PanEuropean strategy covering both prevention and suppression of all phenomena of serious and organised crime.

4.12 The CoE should undertake programmes to ensure that the central units, contact points, and judges involved in MLA have adequate training, language skills and are subject to special performance indicators.

4.13 The lack of comprehensive empirical data on TOC does not allow us to make more precise proposals with regard to MLA and police co-operation. A first step to be taken by the CoE should be to co-ordinate and evaluate all the data obtained from the different monitoring units: joint projects and studies should be developed to obtain a consistent picture of the shortcomings and to set priorities.

The use of SITs

4.14 There is a need to make an assessment on how the SITs are used in practice and evaluate if they are adequately utilised: what is the legal framework; what kind of software is in place to guarantee data protection; can the system of data protection be trusted. For co-operation in this field it is not enough that adequate laws are in place, it is also necessary to confirm that the data protection laws in all CoE member states are correctly applied. The CoE should explore the data protection rights and their implementation, especially in non-EU and CoE countries.

Witness and collaborators

4.15 Witness evidence together with ICTs is essential in prosecuting TOC. The CoE should undertake 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 witness should be further studied and analysed to see if the shortcomings are due to lack of resources, distrust of the witnesses in their national programmes, etc.

4.16 The CoE should also analyse possible incentives to encourage the co-operation of collaborators. It should study the various forms of plea-bargaining and pre-judicial co-

operation agreements that may result in a mitigated punishment or in the dismissal of the case against the co-accused who collaborates and/or testifies.

Synergies and co-operation with other entities

4.17 The CoE should undertake action to systematically promote administrative synergies, i.e. the co-operation of law enforcement and administrative authorities (e.g. financial supervisory units) and private entities (e.g. banks, transportation companies), through their inclusion in bilateral agreements and international conventions, including mutual legal assistance treaties, within the adequate legal framework to grant the adequate protection of human rights. The CoE could consider devoting further attention to administrative synergies within its own committees, with regards to specific forms of organised crime.

Recovery of Assets

4.18 The actual results achieved in confiscating and seizing the proceeds of crime from criminal organisations should be reviewed by preparing an annual report. Swift execution of requests for freezing assets should be a priority.

4.19 The existence of central offices for the recovery of assets in CoE 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 recovery of assets.

4.20 The CoE should explore the proposal for a centralised register of bank accounts in the CoE or a link between the register of the EU and the other CoE member states.

5. Conclusions of the Committee

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

The CoE 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 between the various existing networks in providing mutual legal assistance in criminal matters. The CoE is a unique position for the fostering of co-operation agreements in specific areas where the CoE member states need to co-operate more efficiently.

If there is a lack of political will to implement co-operation mechanisms among the CoE member states, the CoE 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, priorities should be set and a step by step programme or roadmap should be approved at a further stage in order to adopt more concrete measures and actions.

ANNEX I

Example of problems in co-operation: the case of Russia

In 2003 Russia entered into a strategic agreement with Europol, and in this context in 2004 the Russian National Contact Point for co-operation with Europol was established within the Ministry of the Interior. However practice shows that it provides a limited range of opportunities for co-operation, mainly related to the exchange of information and analytical materials of mutual interest. The Russian Ministry of the Interior and Europol have been negotiating for several years on the conclusion of an operational agreement that would give an opportunity to expand the scope of co-operation, and above all, enable the exchange of personal data in the fight against international crime, which, could enhance the level of co-operation and represent a step forward in combating criminal organisations.

The necessary conditions for the conclusion of an operational agreement between Europol and any third state are the signing and ratification of the Council of Europe Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data of January 28, 1981, and the bringing into conformity of its national law on personal data. Both of these conditions are met consistently by Russia. This should open the way to the conclusion of an operational agreement,

It should be noted that even in the face of limited opportunities for co-operation, defined by the 2003 Strategic agreement, the Russian Federation and the European Police Office have conducted several successful joint operations to combat counterfeiting, drug trafficking, smuggling of biological resources, cybercrime, human trafficking, etc.

Though Europol co-operates closely with a wide range of law enforcement agencies and international organisations that feature in many aspects of Europol's operational work, it should be noted that there is lack of co-operation between Europol and some regional and sub-regional organisations (GUAM Virtual Law-Enforcement Centre, the Central Asian Regional Information and Coordination Centre for Combating the Illicit Trafficking of Narcotic Drugs, Psychotropic Substances and Their Precursors (CARICC) and some others). This co-operation could be essential to effectively tackle serious transnational organised crime in Europe. A similar strategy to combat transnational organised crime has been used for the last two decades as a part of inter-state co-operation, including Russia, through INTERPOL, in which this international organisation initiates and carries out the general management of special operations to curb the activities of certain international organised criminal groups. All communications between the headquarters of INTERPOL and national law enforcement agencies are carried out through the national central bureaux, which serve as connecting elements. Thus, joint operational-investigative teams are established, of which the national components are acting within its jurisdiction, connected by a common communication channel under the control "umbrella" of the INTERPOL. Over the past few years, Russia has participated in several of these operations, such as "Millennium" – to prevent the activities of organised criminal groups, "Fusion" and "Kalkan" – counter-terrorist operations, "Pangea" (six phases) – counteraction to the committing of pharmaceutical crimes, "Star" – search and recovery of assets obtained by criminal means, the operation to prevent the committing of various crimes and ensure security during the APEC 2012 summit in Vladivostok and a similar operation is currently being prepared associated with holding in Sochi 2014 of the XXII Olympic Winter Games.