

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Recommendation Rec(2001)11 of the Committee of Ministers to member states concerning guiding principles on the fight against organised crime

*(Adopted by the Committee of Ministers
on 19 September 2001
at the 765th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling that the aim of the Council of Europe is to achieve a greater unity among its Members;

Aware of the need for member states to develop a common crime policy in relation to organised crime by determining ways that ensure greater effectiveness in their legislation and enhance international co-operation in this area;

Emphasising that organised crime represents, by its economic power, transnational connections and sophisticated techniques and methods, a major threat to society, the rule of law and democracy to which states need to react with a common strategy;

Considering that a common strategy requires a firm commitment by states to join efforts, share experience and take common action both at national and international levels;

Bearing in mind the multifaceted nature of organised crime and its interaction with economic crime, including in particular corruption, money laundering and fraud;

Convinced therefore that a common strategy against organised crime also requires common action against corruption and money laundering, and noting with satisfaction the results so far achieved in these fields, notably the adoption of Resolution (97) 24 on the twenty guiding principles for the fight against corruption, the agreement establishing the group of states against corruption (GRECO) and the Criminal Law Convention on Corruption (ETS No.173), as well as the increasing ratification of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (ETS No. 141), and the setting up of a mutual evaluation mechanism for anti-money laundering regimes;

Taking into account Recommendation No. R (97) 13 on the intimidation of witnesses and the rights of the defence and Recommendation No. R (96) 8 on crime policy in Europe in a time of change;

Taking also into account the "best practice surveys" elaborated by the Council of Europe on various measures applied successfully by some member states in the fight against organised crime, which have proved instrumental not only in stimulating other countries' legislation and practice, but equally in the drawing up of the present recommendation;

Mindful of member states' obligations to maintain a fair balance between the interests of society in law enforcement and the rights of individuals, as enshrined in the provisions of the European Convention on Human Rights and the case-law of its organs;

Bearing in mind Resolution No. 1 of the European Ministers of Justice adopted at their 21st Conference (Prague, June 1997) on the links between corruption and organised crime as well as the Final Declaration and Action Plan adopted by the 2nd Summit of Heads of State and Government (Strasbourg, October 1997) calling on the Council of Europe to step up action against corruption, money laundering and organised crime;

Taking into account global and regional initiatives in this field, such as actions by the United Nations, the Financial Action Task Force on Money Laundering (FATF), the G7 and the European Union;

Welcoming the adoption of the United Nations Convention against Transnational Organized Crime open for signature from 12 to 15 December 2000 in Palermo,

Recommends that governments of member states:

- review their criminal policy, legislation and practice in the light of the principles appended to this recommendation;
- ensure that these principles are disseminated to all interested bodies, such as law enforcement agencies, bar associations, judicial organs and other private or public sector institutions involved in the prevention or repression of organised crime.

Appendix to Recommendation Rec(2001)11

I. Definitions

For the purposes of this recommendation:

"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;

- “serious crime”, shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;
- “law enforcement agency” shall mean any public body entrusted with the investigation and/or prosecution of criminal offences in accordance with its legal mandate.

II. Principles relating to general prevention

1. Member states should take measures to prevent natural and legal persons from covering up the conversion of the proceeds of crime into other property through use of substantial cash payments and cash currency exchanges.
2. Member states should take measures to prevent the use of financial centres and offshore facilities for laundering money and conducting illegal financial transactions. For that purpose, member states should allow, *inter alia*, the inspection of financial transactions which have no apparent commercial purpose and require the identification of the direct or ultimate parties involved.
3. Member states should establish requirements for vulnerable professions, to “know their customers” and to report suspicious transactions when such professionals are acting as financial intermediaries on behalf of their clients.
4. Member states should identify in their legislation those provisions, which are or can be abused by organised crime groups for their own purpose, in areas such as export/import, licensing, fiscal and customs regulations, and take steps to strengthen legislation and to prevent abuse. In particular, member states should ensure mutual consistency of provisions and should have these provisions regularly tested by independent auditors to assess their “resistance” to abuse, such as fraud.
5. Member states should ensure that the increasing use of information technology in the financial sector, such as cyber-payment methods or transactions through virtual banks, is accompanied by appropriate security features that prevent or reduce opportunities for illegal use.
6. Member states should establish common standards of good governance and financial discipline that enhance transparency and accountability in public administration, and should encourage the adoption of codes of conduct to prevent illegal practices, such as corruption, in the commercial and financial sectors, including public procurement.
7. Member states should encourage the emergence of a corporate culture based on responsibility and zero tolerance *vis-à-vis* illegal practices. In particular, Member states should establish standards for the protection of “whistle-blowers” who report corruption or other suspected criminal activities committed on behalf of or within legal persons.

III. Principles relating to the criminal justice system

8. Member states should strive to criminalise the participation of any person in an organised crime group, as defined above, irrespective of the place in the Council of Europe member states in which the group is concentrated or carries out its criminal activities.
9. Member states should criminalise the laundering of any kind of criminal proceeds, in particular those originating from organised crime.
10. Member states should penalise the intentional failure to report suspicious financial transactions when committed by those bank and non-bank institutions and professions, which are under a reporting obligation.
11. Member states should, subject to compliance with fundamental constitutional principles, provide for legal measures to deprive persons of assets which are reasonably suspected to originate from organised criminal activity.
12. Member states should ensure that legal persons can be held liable for offences committed on their behalf and linked to organised crime.
13. Member states should pay special attention to tax or fiscal offences linked with organised crime and ensure that they are investigated and prosecuted in an effective manner.
14. Member states should establish investigative strategies that target the assets of organised crime groups through inter-connected financial investigations; as part of such strategies, Member states should set up quick legal mechanisms to lift bank secrecy and adopt provisions under which bankers, fiduciaries, accountants, notaries and lawyers may be compelled by judicial order to produce financial records or statements and, if necessary, give testimony, under appropriate safeguards.
15. Member states should adopt legislative measures for the tracing, freezing, seizure and confiscation or forfeiture of assets originating from organised crime activities.
16. Member states should introduce the possibility of confiscation or asset forfeiture in relation to the proceeds of organised crime by means of judicial procedures that may be independent from other proceedings and, exceptionally, may involve mitigating the onus of proof regarding the illicit origin of the assets.

17. Member states should 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 and/or give testimony or other evidence in relation to organised crime. Similarly, such protection measures should be available for those who participate in or have agreed to participate in the investigation or the prosecution of organised crime as well as for the relatives and associates of the individuals who require protection.
18. Member states should adopt appropriate measures to ensure, both within and outside the country of trial, the protection of witnesses prior to, during or after criminal proceedings.
19. Member states should introduce legislation allowing or extending the use of investigative measures that enable law enforcement agencies to gain insight, in the course of criminal investigations, into the activities of organised crime groups, including surveillance, interception of communications, undercover operations, controlled deliveries and the use of informants. To enable the implementation of such techniques, Member states should provide law enforcement agencies with the required technology and appropriate training.
20. Member states should develop new methods of police work by shifting focus from reactive policing to pro-active policing, including the use of strategic intelligence and crime analysis.
21. Member states should consider the creation of specialised multidisciplinary teams to investigate and prosecute economic and organised crime. Such multidisciplinary work requires the improvement of the co-ordination, communication and exchange of information within the criminal justice system and with other relevant public authorities.

IV. Principles relating to International Co-operation

22. Member states should, for the purpose of facilitating the investigation of the economic background of organised crime groups, enable legally and operationally the exchange of information between their relevant authorities with respect to legal persons and other legal entities registered in their jurisdiction and the natural persons involved in their creation, ownership, direction and funding.
23. Member states should introduce provisions in domestic law or in bilateral or multilateral agreements to enable asset sharing among those countries involved in the tracing, freezing, seizure and confiscation or forfeiture of assets originating from organised crime activities.
24. Member states should make their domestic witness protection schemes/programmes available to foreign witnesses, for example, by entering into bilateral or multilateral agreements providing for such assistance and specifying the applicable conditions.
25. Member states should quickly ratify and implement international legal instruments aiming at fostering police and judicial co-operation among member states, including through bilateral agreements and eliminating obstacles to effective co-operation, for example by :

lifting their reservations entered into the conventions to which they are parties;

- reducing grounds of refusal, especially those related to fiscal or political offences ;
- ensuring that the procedural requirements of the requesting state are taken into account when executing its request for mutual legal assistance, to enable it to make easier use of the evidence collected on its behalf in criminal proceedings;

identifying, within nationally existing structures, central contact points to facilitate contacts with foreign operational agencies;

- appointing, subject to their legal systems, judicial contact points, other than the central authority, for a quicker identification of the requested judicial authorities and for enabling direct transmission of requests for mutual legal assistance in cases of urgency or for the exchange of information;
- ensuring that joint police and law enforcement operations may be carried out with foreign liaison officers and magistrates, and considering posting liaison officers and magistrates in other member states;
- ensuring that a response is promptly given to all requests for mutual legal assistance related to offences committed by organised crime groups;
- ensuring co-ordination of police and judicial co-operation by establishing channels and methods of direct and swift international co-operation and information and intelligence exchange.

V. Principles relating to data collection, research and training

26. Member states should ensure that data is systematically collected and analysed concerning the criminal activities, the organisation, financial background and geographical scope of organised crime groups operating on their territories as well as their connections to other domestic or foreign groups. National systems of data collection and of criminal statistics should take into account the specific features of organised crime and have adequate resources and staff.

27. Member states should support research and the institutions which carry out research on organised crime.

28. Member states should provide the necessary means for training law enforcement agencies and, where appropriate, other components of the criminal justice system, in the area of financial investigations and new methods of investigation.

Appendix - List of legal instruments concerning international co-operation in criminal matters which member states should ratify

- ETS No. 24 European Convention on Extradition (1957);
- ETS No. 86 Additional Protocol to the European Convention on Extradition (1975);
- ETS No. 98 Second Additional Protocol to the European Convention on Extradition(1978);
- ETS No. 30 European Convention on Mutual Assistance in Criminal Matters (1959);
- ETS No. 99 Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (1978);
- ETS No. 73 European Convention on the Transfer of Proceedings in Criminal Matters (1972);
- ETS No. 90 European Convention on the Suppression of Terrorism (1977);
- ETS No. 97 Additional Protocol to the European Convention on Information on Foreign Law (1978);
- ETS No. 141 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990);
- ETS No. 156 Agreement on Illicit Traffic by Sea, implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1995);
- ETS No. 172 Convention on the Protection of the Environment through Criminal Law (1998);
- ETS No. 173 Criminal Law Convention on Corruption (1998).