

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (96) 8

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON CRIME POLICY IN EUROPE IN A TIME OF CHANGE

*(Adopted by the Committee of Ministers on 5 September 1996
at the 572nd 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 between its members;

Bearing in mind the political, economic and social as well as the legal and institutional changes which have taken place in Europe over the past few years, in particular since 1989, the fall of the totalitarian regimes in central and eastern Europe, as well as the creation of the single market in western Europe;

Realising that such changes, albeit for different reasons, concern as much central and eastern as western Europe;

Considering that such changes have had, and will continue to have, major consequences at international, national and individual level;

Considering moreover that, in particular, such changes have a bearing in particular on crime and consequently call for appropriate responses, both at domestic and international level;

Being aware that the effectiveness of such responses depends greatly on their being harmonised within a coherent and concerted European crime policy;

Conscious of the indissoluble connections between criminality in western, central and eastern Europe;

Having regard to the work already achieved by the Council of Europe aimed at bringing closer the crime policies of its member states, which is reflected in a comprehensive set of principles and standards that emerges, *inter alia*, from the texts that it has adopted during the past forty years;

Conscious of the growing need for the Council of Europe to further contribute to that end;

Taking into consideration the recommendations adopted by the Committee of Ministers of the Council of Europe in the field of crime problems,

Recommends the governments of member states to be guided in their policies, legislations and practices concerning responses to present-day crime problems, by the following principles and recommendations:

I. Domestic responses to crime

a. In general

1. Every response to crime must conform to the basic principles of democratic states governed by the rule of law and subject to the paramount aim of guaranteeing respect for human rights.

2. Therefore, however serious the situation of a society might be with respect to crime, any measures aimed at dealing with that situation that do not take account of the values of democracy, human rights and the rule of law are inadmissible.

3. It must be one of the fundamental functions of criminal justice to safeguard the interests of the victims of crime. To this end it is necessary both to enhance the confidence of victims in criminal justice and to have adequate regard, within the criminal justice system, to the physical, psychological, material and social harm suffered by victims.

4. No society is crime-free, and thus the main objective of crime policy cannot be to eliminate crime but rather to contain crime at the lowest possible limits.

5. Subject to the above principles, each member state should have a coherent and rational crime policy directed towards the prevention of crime, including social prevention (for example social and economic policy, education, information, and so on) and situational prevention (for example measures to reduce the opportunities and means of committing offences, and so on), the individualisation of criminal reactions, the promotion of alternatives to custodial sentences, the social reintegration of offenders and the provision of assistance to victims.

6. On drawing up crime policy, governments should take advice from and actively co-operate with professionals directly concerned with the implementation of the policy; they should at the same time take advice from scientists in different fields having a bearing on crime policy.

7. Both because social, economic and other measures often have a direct impact on crime and because effective crime prevention requires a stable environment, crime policy must be co-ordinated with other policies.

8. To this end it is advisable in particular that states create either a crime policy co-ordination unit within central government or a horizontal structure for co-operation between the relevant bodies; it is further advisable that states encourage the development of crime prevention strategies at local or regional level.

9. Governments should participate regularly and actively in international schemes for the collection of relevant statistical information on crime.

10. Material and non-material costs to society of crime in general should be weighed against the costs of crime control.

11. The public must be kept informed of crime problems. Neither crime policy nor, indeed, the criminal justice system can be effective without a favourable public attitude and even active participation by the public.

b. With respect to economic crime

12. Measures should be taken in order to make the criminal justice system better fitted to deal effectively with the sophisticated business transactions that conceal economic crime or themselves constitute economic crimes.

13. Administrative law, commercial law, tax law, competition law and civil law should be called upon more often to play an active part in countering economic crime.

14. Prosecutors, investigating magistrates and judges dealing with economic crime should be given special training.

15. Where appropriate, economic crime should be dealt with in specialised chambers.

16. Provisions relating to time limitations should be reviewed in order to allow the competent authorities sufficient time to gather evidence in economic crime cases.

17. Rules governing evidence should be designed in such a manner as to pay due attention to the requirements of fighting against economic and organised crime.
18. Rules governing bank secrecy should not impede effective action against economic and organised crime.
19. The range of sanctions available in respect of persons convicted of economic offences should include disqualification from engaging in certain economic activities for a given period of time.
20. Provision should be made either for the liability of corporate bodies for criminal offences or for other measures with similar effect.

c. With respect to organised crime

21. Governments should consider the possibility of making it an offence to belong to or support an organised crime association.
22. Governments should endeavour to develop a good knowledge of the features of criminal organisations and to share that knowledge with the governments of other member states.
23. Governments should act on the basis of a strategy, in particular by using intelligence and crime analysis to achieve identified aims.
24. Specialised police, investigation and prosecutorial structures should be created and vested with means to carry out financial investigation and computerised analysis systems.
25. Adequate protection for witnesses and other participants in proceedings relating to the fight against organised crime should be provided for.
26. Interception of communications – both telecommunications and direct communications – should be envisaged in order to cope better with the requirements of fighting against criminal organisations.
27. Money laundering should be made an offence and provisions made for the search, seizure and confiscation of the proceeds of crime.
28. Governments should envisage the possibility of providing for an investigation/prosecution magistrate with jurisdiction over the entire national territory, or providing for the establishment of a central co-ordination body.

II. International responses to crime

a. In general

29. Governments should:
 - improve as far as possible their ratification position with regard to the European Conventions on Extradition (ETS No. 24) and Mutual Assistance in Criminal Matters (ETS No. 30), their additional protocols (ETS Nos. 86, 98 and 99) the additional Protocol to the European Convention on Information on Foreign Law (ETS No. 97), as well as the Convention on the Transfer of Sentenced Persons (ETS No. 112) and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141);
 - review their need to uphold reservations and declarations made when ratifying the above-mentioned European conventions on extradition and mutual assistance;
 - exchange between competent authorities of the member states information on those parts of domestic legislation which appear to be relevant for handling requests for co-operation in criminal matters based on the different conventions;
 - provide, when requested by another government, information and other forms of assistance for drafting domestic legislation on criminal matters, in particular those which have international features

(for example computer crime, environmental crime, fraud, organised crime) with a view to member states adopting domestic legislation which is compatible and harmonised with legislation in other member states, in such a manner as to make international co-operation both possible and uncomplicated;

– exchange, where appropriate, liaison magistrates with other governments, especially those with whom co-operation is more intensive, with a view to assisting the competent authorities when drafting or executing requests for legal co-operation and, moreover, to contributing to harmonising procedures and reducing delays;

– organise seminars for the competent authorities on particular subjects related to international co-operation;

– set up exchange programmes for judicial authorities, in particular judges and prosecutors specialised in organised and economic crime, with a view to enabling them to visit their counterparts in other member states for short periods and acquaint themselves with the working methods and legal systems in other member states;

– examine the advisability of developing amongst member states a computerised information network including all components of criminal justice systems in member states, as well as a database containing, *inter alia*, legislation and case-law.

30. Governments should bear in mind existing structures for police and judicial co-operation, such as ICPO-Interpol, and make optimal use of them.

31. Training of judges, prosecutors and police officers should take into account international aspects of crime as well as international co-operation instruments and practices.

32. In the long term, existing structures of mutual assistance based on the traditional concept of separate states might be complemented by adequate measures of co-operation and be improved by the creation of new supra-national structures for the judiciary.

b. *With respect to economic and organised crime*

33. European standards should be adopted on mutual legal assistance involving the use of sensitive data.

34. European standards should be adopted on mutual assistance for the purpose of the use of telecommunications in the giving of evidence.

35. Procedures should be developed on simultaneous and co-ordinated multilateral mutual legal assistance between three or more countries.

36. Bearing in mind existing structures for police co-operation, methods should be provided for better co-ordination of police teams working together across borders in the investigation of given cases.

37. Controlled delivery techniques and the use of undercover agents should be studied at international level.

38. Provision should be made for setting up international multi-disciplinary expert teams working together in given cases.

39. International administrative assistance should be provided for and made available to national control authorities with jurisdiction over areas that are prone to economic crime.

40. Efforts should be undertaken in order to find the right balance and the necessary co-ordination between international administrative assistance and mutual legal assistance in criminal matters.

41. Differences between national rules governing bank secrecy should not hamper effective international co-operation in the fight against economic crime and organised crime.

42. The possibility should be studied of giving international effect to the disqualifications mentioned in item 19 above.