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Delegations will find enclosed the outcome report on a strategic seminar held in Copenhagen on 11-13 March 2012 on "A Multidisciplinary Approach to Organised Crime: Administrative Measures, Judicial Follow-up, and the Role of Eurojust".

## 1. Introduction

The strategic seminar, “A Multidisciplinary Approach to Organised Crime: Administrative Measures, Judicial Follow-up, and the Role of Eurojust”, was held in Copenhagen on 11-13 March 2011. The seminar was jointly organised by Eurojust and the Danish Presidency of the European Union. The goals of the seminar were to share experiences on the benefits of a multidisciplinary approach to organised crime, discuss the challenges in relation to the interaction amongst different stakeholders and possible judicial follow-up, and explore the cross-border aspects of this approach and the role of Eurojust. Presentations from practitioners from a number of Member States and representatives from the European Commission and OLAF were followed by in-depth workshops and plenary discussions.

The seminar focused on specific crime areas in which cooperation could be strengthened between administrative authorities, private entities and NGOs, on the one hand, and judicial and law enforcement authorities, on the other hand. It also addressed horizontal issues, such as asset recovery, including non-conviction-based confiscation, information exchange, the gathering and use of evidence and the protection of procedural rights.

A total of 120 participants attended the strategic seminar, including national experts and representatives from the Council of the European Union, the European Parliament, the European Commission (DG Justice, DG Home Affairs and OLAF), Europol and Eurojust.

### 1. Opening session and welcome speeches

Opening remarks were made by *Mr Svend Larsen, Acting Director of Public Prosecutions in Denmark* and *Mr Aled Williams, President of Eurojust and National Member for the United Kingdom*. Both speakers emphasized that, as organised criminal groups can now cross national borders and build flexible structures able to operate in several jurisdictions, traditional ways of fighting crime are no longer sufficient. As a result, new measures have been proposed at EU level, such as the Stockholm Programme, the European Commission’s Action Plan on the Stockholm Programme, the EU Internal Security Strategy, and a Handbook prepared under the auspices of the Hungarian Presidency of the European Union in 2011<sup>1</sup>.

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<sup>1</sup> “Complementary approaches and actions to prevent and combat organised crime – A collection of good practice examples from EU Member States” (the “Hungarian Handbook”).

These documents highlight the need to promote a multidisciplinary approach in which judicial authorities and law enforcement agencies, and also administrative bodies and relevant private parties, can play a relevant role. As stressed by both speakers, a multidisciplinary approach should not be seen as an alternative to the criminal law approach but rather as a complementary strategy. Participants were reminded of the important role Eurojust can play in this field through its operational work, by building bridges between police, judicial authorities, and other relevant authorities and stakeholders, and ensuring a proper judicial follow-up.

### **Multidisciplinary approaches to organised crime – national and international dimensions**

*Mr Jesper Hjortenbergh, National Member for Denmark, Eurojust*, introduced the topic of the seminar by stressing that to combat organised crime more efficiently and prevent impunity, an urgent need has arisen to supplement the “traditional judicial approach” with more innovative measures. Against this background, the seminar should contribute to the ongoing discussion on how a multidisciplinary approach to organised crime can be promoted at national, regional and EU levels. While traditional criminal investigations of organised criminal groups are often lengthy, costly, and in most cases are not focussed on leaders of the groups, consideration should be given to targeting them from an angle where they are most vulnerable: their assets and money. The successful prosecution of Al Capone for income tax evasion, rather than for participation in an organised criminal organisation, serves as a good example of this approach, which has been followed by several Member States, including Denmark. This approach is followed on the basis that organised criminal groups need to interact with the legal economy to cover their illegal activities and invest their illegal profits, and often contravene housing and welfare regulations, immigration law, and regulations on permits and licenses. Mr Hjortenbergh identified a number of key points when considering the multidisciplinary approach: (a) the need for a common and solid legal framework; (b) effective data protection; (c) exchange of information; (d) avoidance of excessive formalities and the possible revision of the roles and responsibilities of the players involved; and (e) possible issues related to the different standards of the burden of proof in criminal and administrative proceedings.

## **The Contribution of OLAF to the fight against organised crime: towards an integrated approach**

*Mr Giovanni Kessler, Director-General, OLAF*, noted that this seminar and the discussion on this topic were long overdue. He indicated that the boundaries between administrative and criminal investigations are not often clear. In this respect, despite the fact that the tackling of organised crime as such does not fall under OLAF's core mandate, 35 out of 375 closed OLAF investigations conducted in 2009 and 2010 have shown links to organised crime. Mr Kessler identified three main problematic issues: (1) the lack of a European perspective, as national authorities often only consider the national dimension of the investigation and are unaware of its transnational dimension; (2) the lack of jurisdiction or national interest, or means for domestic authorities to involve other Member States in a case; and (3) the lack of results, as cases referred by OLAF are often dismissed before trial and the average conviction rate is 41%. In that respect, the percentage of cases dismissed varies widely (from 10% to 89%) depending on the Member State. With reference to point (2), Mr Kessler stressed the need to increasingly involve Eurojust not only in the facilitation of information exchange but also in the coordination of investigations, especially with a view to avoiding cases of negative conflicts of jurisdiction. He concluded by identifying three main points to overcome the above-mentioned issues: (1) implementation of cooperation amongst prosecution services, judiciary and law enforcement, both at national and EU level (including Eurojust and OLAF); (2) the need for an EU investigative body, of which OLAF can be considered the embryo, and for common substantive and procedural rules with a view to avoiding negative conflicts of jurisdiction, invalid proceedings and "forum shopping"; and (3) the need to implement the above measures in view of the creation of a European Public Prosecutor's Office which, under the Lisbon Treaty, should start from Eurojust.

## 2. Plenary session

### **Cooperation between the Danish Financial Intelligence Unit and the Danish Tax and Customs Administration**

*Mr Peter Nørregaard, Chief Inspector, Economic Crime – Intelligence Network, Danish Tax Authorities, Denmark*, indicated that tax and customs authorities in Denmark belong to the same administration. Since the coming into force of recent legislation, no legal obstacles to the exchange of information between police and tax and customs authorities have been reported. As the latter do not have judicial powers, they regularly cooperate with judicial authorities. In Denmark, fraud can be considered either as an administrative or a criminal offence. To ensure that only cases that are relevant for tax purposes are referred to the tax authorities, police and tax and customs authorities cooperate regularly. Tax and customs authorities in Denmark have been particularly successful in fighting chain fraud (domestic carousel fraud) and carbon credit fraud. The “Al Capone model” is widely used and money is seized from criminals in respect of the commission of tax offences. In 2011, tax and customs authorities seized approximately €20 million.

### **A Multidisciplinary Approach to Organised Criminal Groups, learning by experience**

*Ms Eli Gabel, Public Prosecution Service Unit, Amsterdam, Netherlands*, presented the Dutch experience with regard to a multidisciplinary approach to organised crime, which seeks to eliminate opportunities and create obstacles to the commission of crimes, the central principle being that all administrative authorities, as well as private companies, banks, housing associations and NGOs, amongst others, have a role to play in preventing and fighting organised crime. Ms Gabel presented an overview of the different measures that can be taken under Dutch law to circumvent organised criminal groups’ use of local infrastructures and facilities to carry out their activities or to launder the proceeds of their crimes. By way of illustration, Ms Gabel alluded to various ongoing projects throughout the country where this approach reflects successful cooperation amongst the National Police Services Agency, National Public Prosecutor’s Office, Regional Police and Regional Units of the Public Prosecutor’s Office, together with banks and various administrative authorities.

Further tools used in the Netherlands are: (1) the Public Administration (Probity Screening) Act 2002, which contains rules on the furtherance of probity screening by the public administration with regard to decisions on permits, subsidies and public contracts; and (2) Regional Centres of Information and Expertise (RIECs), created in 2008, and the Netherlands' National Centre of Information and Expertise (LIEC), created in 2011. With regard to the exchange of information, Ms Gabel highlighted the importance of a proper legal basis, such as covenants amongst the parties involved.

## **The SOCA Compendium**

*Mr Tony Waldron, Principal Officer, Serious Organised Crime Agency (SOCA), UK*, presented the SOCA Compendium, a directory of 140 disruption capabilities, tools and techniques, which can be used in either a criminal justice or non-criminal justice context to disrupt organised criminals and dislocate their markets. The Compendium range of options offers an alternative or complement to traditional means of investigation but does not replace it. SOCA advocates multidisciplinary partnership working and shares its approach with other law enforcement agencies and prosecution services in the UK. It works very closely with law enforcement partner agencies such as the police, Her Majesty Revenue and Customs (HMRC) and the UK Border Agency (UKBA). It also engages closely with the Home Office and the Crown Prosecution Service (CPS). Increasingly it is using more innovative approaches to prevent and disrupt organised crime, working with the wider public and private sectors. Examples of the criminal-justice tools used by SOCA are ancillary orders such as Financial Reporting Orders, Serious Crime Prevention Orders, and Travel Restriction Orders. These are prohibitive tools with a range of penalties, aimed at preventing and deterring future criminality. SOCA also exploits a number of non-criminal justice tools, such as civil recovery and tax powers to recover criminal assets, the powers of regulators to disrupt criminals and their businesses and the power of the media, organising high profile campaigns with the charity *Crimestoppers* to gain public support and information on organised criminal activity. In concluding his presentation, Mr Waldron emphasised that SOCA's approach focused on multi-agency partnership working using a range of traditional and non-traditional tools to prevent and disrupt serious and organised crime. Furthermore, that sharing experiences and ideas on alternative and complementary approaches with partners both in the UK and at EU level remains key to long term success against the global threat posed by organised crime.

## **How to prevent infiltrations of organised crime in the legal economy: the Italian experience**

*Mr Francesco Lo Voi, National Member for Italy, and Mr Filippo Spiezia, Deputy National Member for Italy, Eurojust,* gave participants an insight into the complex Italian Anti-Mafia legislation first enacted in 1982, making Italy a pioneering country in the EU in the use of administrative regulations and judicial measures having no criminal nature in the fight against organised crime perpetrated by mafia-type criminal groups. Reference was made to the fact that, as recently as September 2011, new Anti-Mafia legislation has been enacted introducing several provisions in the field of prevention and anti-mafia documentation to better protect public tenders by increasing standards of security and legitimacy. Mr Spiezia made a short presentation on a concrete operation against a ‘Ndrangheta group, for which several non-criminal measures were successfully used. When using these measures, which are separate from criminal proceedings, three main conditions relating to the principle of legality must be met: (1) the measures must be permitted by law; (2) the most intrusive measures must be applied by a judicial authority; and (3) a legal remedy exists. Mr Spiezia stressed the following points: (1) the multidisciplinary approach is flexible; (2) the principle of legality must be respected; (3) the sharing of information is essential; and, finally, (4) cooperation needs to spread at EU level, as a common legal framework regarding non-conviction-based tools is lacking, which might create impunity for some criminals who would relocate their assets to more “favourable” jurisdictions. Mr Lo Voi emphasized that non-conviction-related seizures and confiscations are still crime-related and that under this approach two conditions must be met: (1) a serious suspicion of participation in a criminal organisation; and (2) a lack of proportion between the assets owned by the individual and his/her income. In all these cases, the onus of proof is inverted, as the suspect must prove the licit nature of his/her assets. Furthermore, as a need to strike a balance between prevention and repression is present, these measures have been recognised by the European Court of Human Rights to be in compliance with the principles of the European Convention on Human Rights.

## **Presentation of the Network of Contact Points on the administrative approach to prevent and fight organised crime**

*Mr Mickaël Roudaut, DG Home Affairs, Fight Against Organised Crime, European Commission,* made a presentation on the work of the Network of Contact Points (the Network) on the Administrative Approach to Prevent and Fight Organised Crime launched in September 2011. He drew the participants' attention to the main conclusions reached at the first meeting of the Network. The Commission supports the idea that the Network be given a more permanent status and be linked to a relevant Council Working Group. To ensure continuity of business, the Commission is prepared to provide financial support to the Network. As a major challenge to the very limited amount of EU legislation on information exchange, the Commission has launched a questionnaire to the Member States, the conclusions of which are as follows: (a) more research should be conducted on this topic; therefore, the Commission supports a study, to be commenced later this year, to map out the main difficulties in information exchange and identify possible solutions, and (b) EU agencies, such as Europol and Eurojust, should be more involved. In this respect, Europol's proposal to host the Network on the Europol Platform for Experts (EPE) was welcomed by the Commission. Mr Roudaut proposed that at the second meeting of the Network, yet to be scheduled, Member States decide on priority areas.

### **3. Workshops**

#### **Workshop 1 – Money laundering, asset recovery and cooperation with tax authorities**

*Chair and rapporteur: Mr Per Fiig, Deputy State Prosecutor for Serious Economic Crime and Head of the Danish Financial Intelligence Unit*

*The goal of the workshop was to identify best practices and challenges in the application of multidisciplinary measures in the field of money laundering and asset recovery, and recommend possible solutions to recurrent difficulties encountered by practitioners.*



Participants identified five main challenges when using a multidisciplinary approach: (1) lack of a comprehensive legal framework for information exchange; (2) lack of awareness of existing legal provisions that allow for this information exchange in certain circumstances; (3) lack of awareness of competent authorities and their role in this field; (4) lack of centralised databases, such as for banking information; and (5) insufficient trust or lack of trust amongst relevant authorities.

To address these challenges, participants identified the following possible solutions: (1) establishment of a comprehensive legal framework that allows for the exchange of information; (2) support of training with a view to enhancing awareness; (3) strengthening ties amongst different authorities through the promotion of multidisciplinary structures, such as Asset Recovery Offices, Financial Investigation Units, and “national” Joint Investigation Teams; and finally (4) establishment of national centralised databases, the access to which would be on a “hit/no-hit” basis.

A number of participants also considered non-conviction-based confiscation as an interesting field to develop further. The issue of non-conviction-based confiscation is becoming increasingly important. One participant made reference to the new Italian Anti-Mafia legislation, according to which both a criminal trial and non-conviction-based confiscation proceedings can be carried out against the same person, as these two proceedings are independent from each other. The question of third-party rights, however, still remains open.

Participants identified three recommendations concerning the role of Eurojust: (1) in the short term, the promotion of participation of administrative authorities in coordination meetings and Joint Investigation Teams; (2) in the medium term, the enhancing of awareness of national legal frameworks and existing structures through the creation, for instance, of *Fiches*, and the widening of Eurojust’s competence to include tax offences; and (3) in the long term, support to the sharing of best practices and the carrying out of work leading to a standardisation of exchange of information from a legal, practical and technical perspective.

## **Workshop 2 – Cooperation with private entities and NGOs**

*Chair and rapporteur: Mr Ola Laurell, National Member for Sweden, Chair of the Trafficking and Related Crimes Team and Eurojust Contact Point for Child Protection, Eurojust*

*The goal of the workshop was to consider the opportunity to promote a wider exchange of information between judicial and law enforcement agencies, on the one hand, and relevant stakeholders, such as private entities and NGOs, on the other.*

In the course of the workshop, participants noted the following main challenges in this field of cooperation: (1) issues surrounding the identification of relevant private entities and NGOs, such as trust and reliability of the sources of information; (2) matters related to the exchange of information and admissibility of evidence, such as the existence of differing legal provisions; and (3) the possibility of considering the involvement of private entities and NGOs in coordination meetings and Joint Investigation Teams.

*Ms Pamela Bowen, Senior Policy Advisor, Crown Prosecution Service, UK, made a presentation on the UK experience in the field of cooperation with private entities and NGOs, which extends to the Department for Environment, Food and Rural Affairs (DEFRA), the Health and Safety Executive, Her Majesty Revenue and Customs (HMRC), private entities and NGOs. Ms Bowen highlighted that regular contact with NGOs and private entities has proven very useful in building a relationship of trust. This relationship of trust can provide the foundation for future cooperation, particularly in certain crime areas. In this respect, Ms Bowen and Mr Waldron stressed that cooperation provided by NGOs can be pivotal in cases of trafficking in human beings and in the field of child protection, as NGOs sometimes have more and better information on victims than the police or the prosecution services.*

The role Eurojust can play in this field was thoroughly discussed against the background of its positive experience as a member of the European Financial Coalition against Commercial Sexual Exploitation of Children Online and its involvement with NGOs dealing with cases of child sex abuse. Mr Laurell drew the participants' attention to the fact that, according to its current legal framework, Eurojust has no legal basis for providing information containing personal data to private entities and NGOs. However, within the limits of its mandate, Eurojust can receive this type of information. With this situation in mind, participants discussed the advantages and disadvantages of involving private entities and NGOs in the operational work of Eurojust. Mr Laurell and other Eurojust National Members gave some examples based on their successful case-related experiences with private partners in coordination meetings and Joint Investigation Teams. Furthermore, Mr Laurell referred to the 2002 Framework Decision on JITs and the 2000 Mutual Legal Assistance Convention, both of which allow persons other than competent authorities of the Member States to take part in the activities of a JIT, only insofar as the legislation of the concerned Member State or the provisions of any applicable legal instruments so permit. Participants then engaged in a discussion of the possible advantages of including other stakeholders, such as private parties and NGOs, in JITs.

Participants concluded that Eurojust could promote, where relevant, a multidisciplinary approach to organised crime at EU level by building bridges amongst different legal systems, sharing knowledge of relevant national legislations and practices, and providing national authorities with a more "transnational perspective". Participants also considered the opportunity for Eurojust to establish high-level strategic cooperation with key counterparts from the private sector. Finally, participants discussed the possibility of inviting private partners and NGOs to participate in tactical meetings, coordination meetings and Joint Investigation Teams, always within the limits of the applicable legal framework.

### **Workshop 3 – Cooperation with public bodies granting permits and licenses**

*Chair and rapporteur: Mr Nicholas Franssen, Counsellor, Ministry of Security and Justice, Netherlands*

*The goals of this workshop were to explore the value and further development of close partnership between investigating/prosecutorial authorities and public bodies responsible for granting permits and licences, to discuss the main challenges and best practices identified at national level, to propose ways in which cooperation could be further developed both at regional and national levels, and finally to explore and frame the requirement for EU policy.*

In the course of the discussions, a number of participants identified centres of information and expertise and working groups at national level to support cooperation between investigating/prosecutorial authorities and the above public bodies. Participants agreed that any economic sector is vulnerable to infiltration by organised criminal groups, as these groups are constantly seeking new fields in which to hide the profits of their criminal activities. However, carbon credit fraud, environmental fraud, match fixing and associated forms of corruption have been identified as currently particularly “attractive”. With regard to the main challenges faced in this field of cooperation, participants identified the exchange of information, the building of trust, the enhancing of awareness and the structure of the public administration itself as particularly crucial factors. Regarding best practices, participants identified, amongst others, protocols covering sub-contractors, the UK SOCA Compendium, and the Manual on the Regional Centres for Information and Expertise developed in the Netherlands. Participants acknowledged that the exchange of information is the major, and possibly the greatest, difficulty in this field. The nature and extent of information exchange will very much depend on the legal basis, and a balance should be maintained between an effective and easy exchange of information and the rights of the individual (data protection). Participants generally took the view that cooperation with public bodies granting permits and licences could be further developed at regional, national and EU level and that this cooperation should begin at national level and escalate to EU level. They further agreed that legislation, covenants, policy-making and the exchange of best practices are equally important tools.

Finally, concerning the need for EU policy and further research on the multidisciplinary approach, participants identified as a possible idea for the future the setting up of a European Certificate on Criminal Records, and the promotion of Eurojust's participation in the meetings of the Europol Platform of Experts.

#### **4. Workshop conclusions and general debate**

*Mr Hans G Nilsson, Head of Division, Fundamental Rights and Criminal Justice, General Secretariat of the Council of the European Union*, summarised the conclusions of the three workshops and chaired the panel discussion and general debate. Mr Nilsson emphasized the issues addressed in the workshops: (1) the need to have a robust legal framework in place as a precondition for the exchange of information between judicial and law enforcement authorities and public bodies, private entities and NGOs; (2) the need to ensure a “two-way” exchange of information and “appropriate” feedback, always bearing in mind the secrecy of investigations and, although not emphasised during the discussions, the need to strike a balance between information exchange and data protection principles (in particular, the principle of purpose limitation); (3) the vital importance of mutual trust amongst the authorities involved at local, national and EU level, through, for instance, training, participation in seminars, national Joint Investigation Teams and exchange of information; and, finally, (4) awareness of the needs, motivation and expertise of all partners involved. In this context, Mr Nilsson emphasized the important role that Eurojust, as the EU Judicial Cooperation Unit, can play through its coordination meetings and its support to Joint Investigation Teams.

#### **5. Future perspectives, the role of Eurojust and seminar conclusions**

*Mr Johan Legarth, Minister of Justice of Denmark*, made an intervention highlighting the number of initiatives that have been taken both at EU and national level, and the progress made in the field of multidisciplinary approach. Mr Legarth emphasized, however, that further initiatives should be taken. He noted that judicial follow-up and the role of Eurojust have not been fully explored, making this seminar's topic timely.

He also referred to the recent discussion in the margin of the Council meeting where, *inter alia*, the issue of the multidisciplinary approach to organised crime had been addressed, and where conclusions had been reached that (a) diverse methods are necessary to fight organised crime; (b) the exchange of information requires confidence, flexibility and coordination and neither national nor EU legislation on this matter should pose difficulties; and (c) Eurojust and Europol should play a more active role in identifying the types of organised crime in which this approach may be particularly useful. Mr Legarth concluded by reiterating that this topic is very important and will be on the agenda at the 27 March 2012 European Crime Prevention Network Seminar in Brøndby, Denmark. He further expressed his wish that the second meeting of the Informal Network would be held under the Danish Presidency and that Eurojust would be invited to be actively involved in its planning to ensure that an adequate judicial dimension to the multidisciplinary approach is duly taken into account.

*Ms Michèle Coninsx, Vice-President of Eurojust and National Member for Belgium*, introduced the final part of the seminar by delivering a presentation on future perspectives for Eurojust. In recognising the difficulties in this area, and with so much still to be done, Ms Coninsx provided an overview of the background and current initiatives at EU level to promote a multidisciplinary approach, with particular emphasis on the work of the Standing Committee on Operational Co-operation on Internal Security (COSI) and Eurojust's role in COSI in promoting a judicial dimension within the EU crime priorities. Ms Coninsx reminded participants of Eurojust's important role in the judicial dimension of the fight against organised crime at EU level and noted that, despite not having been sufficiently developed in the past, the judicial dimension is crucial. In this regard, Ms Coninsx wondered whether, for instance, the judicial dimension of the multidisciplinary fight against organised crime had been sufficiently touched upon in the Hungarian Handbook.

Considering the role of Eurojust, Ms Coninsx noted Eurojust's growing experience in the field of cooperation with administrative authorities at an operational level, and private entities at a strategic level. With regard to the former, Eurojust could further promote coordination meetings and Joint Investigation Teams involving administrative authorities, such as customs and tax authorities. With regard to the latter, in the field of counter-terrorism, Eurojust has sought to develop cooperation with the private sector to obtain relevant information for its casework. Additionally, Eurojust participates in a number of multidisciplinary activities, such as the CARIN Network in the field of asset recovery, and within the Informal Network.

*Mr Hjortenber* summarised the final conclusions of the seminar by highlighting that the first commitment should be the effective building up of mutual trust amongst prosecution services, police, public bodies, private entities and NGOs, amongst others. By way of example of a field where the multidisciplinary approach could be further developed, he noted the growing number of cases involving the medical sector. The participation of representatives from the medical sector in coordination meetings could prove beneficial. With regard to the particular role of Eurojust, Mr Hjortenber alluded to the use of the Eurojust National Coordination System (ENCS) in the promotion of the multidisciplinary approach, and the need to include tax crimes in Eurojust's future mandate. He concluded by reiterating that the multidisciplinary approach to organised crime is a topic that requires revisiting, that it should be discussed at Eurojust, and that more seminars and tactical meetings in this field should be promoted.

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