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TJ McIntyre

Our ref: 156/209/2011  
OIC ref: 110126

### **Your Freedom of Information Request**

Dear Mr. McIntyre

I refer to correspondence from the OIC of 17 October 2013 with regard to your review application in respect of your request to this Department under the Freedom of Information Act 1997, as amended.

Please find enclosed records the following records:

**File No. 906 - - 11 Doc 1: CRIMORG Doc – Final Report on the Second Round of evaluation – Law enforcement and its role in fighting Drug Trafficking.**

**File No. 906 - - 15 Doc 1: Email to Council of Europe (dated 14/11/05)**

**File No. 906 - - 16 Doc 5: Email from EC re implementation of instruments (dated 18/11/05)**

Yours sincerely,

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Aisling Brennan,  
Freedom of Information Officer  
Department of Justice and Equality  
24 October 2013

cc Office of the Information Commissioner



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 22 September 2003**

**9615/3/03**

**REV 3**

**LIMITE**

**CRIMORG 43**

**NOTE**

from :	Presidency
to	Article 36 Committee
Prev. doc.	9615/2/03 REV 2 CRIMORG 43
Subject :	Final report on the second round of evaluation - Law enforcement and its role in fighting drug trafficking

At its meeting of 17 September 2003, the Multidisciplinary Group agreed to the text of the Final report as set out in the annex. The NL delegation objected to the fact two Member States' policies were mentioned explicitly in the footnote on page 11. The Presidency invites the Article 36 Committee to resolve this issue and to forward the report to Coreper/Council. The Presidency considers also that this report could be sent to the European Parliament for information.

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# 1 INTRODUCTION

Pursuant to Article 8 (5) of the Joint Action of 5 December 1997<sup>1</sup>, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime, this report endeavours to draw conclusions relating to the second evaluation exercise, with a view to enabling the Council to take the decisions incumbent upon it.

The second round of mutual evaluations addressed the application and implementation at national level of instruments dealing with law enforcement and drug trafficking, of the resulting legislation and practices at national level and of international co-operation. In particular, the evaluation objectives were to assess co-operation and co-ordination between different law enforcement structures and operational practices in them. Overall, the main focus of the evaluation was to be the practical day to day co-operation between different units both at national and international level.

This report is based on the individual evaluation reports<sup>2</sup>, the summary reports<sup>3</sup> and discussions of those reports in the Multidisciplinary Group on Organised Crime (MDG). Its purpose is not to reproduce the individual recommendations made to the Member States. It endeavours to highlight the main questions identified in the course of the exercise, identify good practice, analyse it and, where appropriate, propose action in the form of recommendations either to the European Union or to the Member States themselves depending on the case. These recommendations are of course not all of the same importance and this should therefore be taken into account when examining the present report.

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<sup>1</sup> Article 8(5): *"At the end of a complete evaluation exercise, the Council shall take the appropriate measures."*

<sup>2</sup> The reference numbers for the individual reports are as follows: Austria (5445/2/01 CRIMORG 7 REV 2 + COR 1); Belgium (10427/02 CRIMORG 53); Denmark (5608/1/02 CRIMORG 6 REV 1); Finland (8050/1/02 CRIMORG 20 REV 1); France (155500/1/02 CRIMORG 110 REV 1 + COR 1 (en)); Germany (9405/1/01 CRIMORG 63 REV 1 + COR 1); Greece (6638/1/02 CRIMORG 11 REV 1); Ireland (5142/1/02 CRIMORG 1 REV 1); Italy (5952/2/01 CRIMORG 15 REV 2 + COR 1); Luxembourg (7916/01 CRIMORG 42 + COR 1 (en)); Netherlands (9999/1/02 CRIMORG 45 REV 1); Portugal (13594/1/02 CRIMORG 92 REV 1); Spain (13572/1/01 CRIMORG 121 REV 1 + COR 1); Sweden (8020/1/01 CRIMORG 45 REV 1 + COR 1); United Kingdom (8414/1/02 CRIMORG 28 REV 1).

<sup>3</sup> The reference numbers for the summary reports are as follows: 12384/2/02 CRIMORG 80 REV 2; 12359/3/02 CRIMORG 79 REV 3; 6178/2/03 CRIMORG 9 REV 2.

## 2 GENERAL OBSERVATIONS

Both the individual recommendations in each evaluation but also the overall results of the evaluation of Member States' systems of fighting drug trafficking from a law enforcement<sup>1</sup> perspective are of major interest to the European Union.

The impact created by drug misuse within the societies of the EU Member States is reaching beyond the field of justice and home affairs. Therefore, any action directed against drug crime can neither be seen in an isolated manner nor can it be dealt with by law enforcement alone. The nature of the overall drug problem that is characterised by an involvement of social, fiscal and health policies renders it particularly difficult to adjust actions against drug crime in an appropriate and timely manner. Furthermore the multitude of actors confines law enforcement's direct influence to certain areas and make the law enforcement services to rather react than act proactively. The findings in the individual reports can therefore not be seen in isolation where the law enforcement services are seen as sole actors but have to take into account that the individual Member States' effort directed at the drug problem in general and fighting its criminal aspects in particular are placed in this broader context.

However, within the parameters set, there is a wide range of factors determining the effectiveness and efficiency of the fight against drug trafficking at national and EU level that have been subject to evaluation during this exercise.

The Action Plan of 28 April 1997 to combat organised crime, adopted by the European Council at Amsterdam, that also proposed the setting up of the mutual evaluation mechanism on which this report is based has laid down the key elements of the general approach and the manner in which to combat organised crime and hence drug trafficking as one of its forms.

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<sup>1</sup> Following the definition of the Action Plan to Combat Organised crime of 28 April 1997, law enforcement agencies include, where appropriate, its financial regulators as well as customs agencies even if in a particular Member State they are not considered to be a law enforcement agency.

These elements have been reflected in the drafting of the questionnaire<sup>1</sup> that was serving as the basis for the evaluation and in this context *inter alia* emphasised matters of approximation and harmonisation, the need to look into the financial aspects of crime and the utilisation of modern technologies by criminals.

### 3 GENERAL OBSERVATIONS ON THE EVALUATION METHOD

The evaluations conducted have been extremely wide ranging in their approach. This is demonstrated by the large and varied number of recommendations made in the individual reports concerning organisational structures, intelligence gathering, special investigation techniques as well as co-ordination and co-operation. The experts involved in the fifteen evaluations covered by this report have also been able to draw on the experiences accumulated during the entire evaluation process, and this has facilitated a broad picture that was obtained of the situation regarding law enforcement and drug trafficking.

All of the evaluations have been prepared and carried out in a very positive and comprehensive fashion. Not only have individual evaluations focused on areas requiring improvement but also on areas of good practice for wider application.

Many of the recommendations made relate to the unique make up of individual countries and as such would not universally apply to systems with differing procedures or legal structures. However, some common themes did emerge and the experts have made recommendations with potential application to all Member States that have been processed when drafting this report.

An additional benefit of the evaluation process is that Member States have been using the evaluation mechanism as an opportunity to take stock of their specific situation and have been reviewing relevant issues even in advance of the on site visits. All had or were in the process of making tangible improvements in key areas of activity.

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<sup>1</sup> Council document 12971/1/99 CRIMORG 171 REV 1.

Furthermore it has to be noted that some of the areas that were subject to recommendations have already been improved or have given rise to discussions in the appropriate Council working parties.

On the basis of the experiences derived from the first round of evaluations, the method of employing experts designated by the Member States or "peer group" evaluators was extended to the second round. The method has undoubtedly contributed to the effectiveness of the evaluation exercise as they were able to evaluate the different national systems from their respective professional backgrounds. The fact that national experts in the Council Secretariat assisted the teams and the very positive contribution made by the Commission has also contributed to the overall success of the second evaluation round.

It has to be valued as particularly beneficial that the experts employed for an evaluation mission usually came from different professional backgrounds (police, customs, judicial authorities) thus safeguarding a truly multidisciplinary approach during the whole exercise.

#### **4 KEY FINDINGS**

The **first finding** that can be drawn from the fifteen evaluations is that, although Member States may have rather different strategic approaches on how to tackle the drug problem from a more global point of view, their individual law enforcement services were performing in a highly dedicated manner within the boundaries set by the legal framework in force and their respective areas of competence.

However, **secondly** with the view directed more at the law enforcement services and their interaction with each other, the evaluation teams have encountered deficiencies in the decisive area of co-operation and co-ordination between the different law enforcement services. These are ranging from an underlying rivalry between the services to a lack of awareness as regards the jurisdiction and capabilities of other services that have a stake in fighting drug trafficking. Such deficits are as a consequence preventing a more effective working relationship. In a number of countries visited the expert teams noted that such peculiarity was rooted particularly in the

relationship between police and customs services and their diverging competencies as regards investigations. Nevertheless it has to be admitted that some Member States have taken promising steps in order to merge the expertise of both services and exploit them for the benefit of the common cause. At the other end of the scale it has been noted that some Member States are still marked by counterproductive employment of their expertise.

The **third finding** relates to the implementation of international instruments and ensuing national legislation. It can be concluded that Member States have made great efforts to amend their legislation and take administrative steps in order to implement them properly, particularly in the field of anti-money laundering activities.

The **fourth finding** relates to the importance of consistent anti-drug strategies, their proper monitoring and controlling along with the necessity for political steering and support, particularly from senior politicians.

Some EU Member States have developed very consistent drug strategies that are allowing for a flexible top-down implementation. Such practices appeared to have resulted in a greater efficiency, the tasks of the individual services seemed to have become more manageable and measurable and are providing law enforcement with the basis for dedicated monitoring mechanisms, a feature that most of the Member States were lacking at the time of the evaluation.

The **fifth finding**: Driven by the assumption that the potential financial gain from organised crime and hence drug trafficking are decisive factors for criminals when pursuing their activities, the emphasis on financial aspects of drug trade asks for particular attention by the law enforcement services. Generally, it can be concluded that the evaluation teams have encountered a high awareness of this fact. This was also reflected in the efforts of Member States' law enforcement services to emphasise the financial aspects of investigations and the creation of special units within the law enforcement services looking into confiscation issues and the securing of assets. However, the issue of confiscation in its various shades, sometimes entangled with the fundamental question of the reversal of the burden of proof as regards the illicit origin of property, has shown a wide array throughout the member States. It is perceived that this particular principle will also be potentially difficult to be harmonised with regard to different legal opinions of the Member States.

The **sixth finding** relates to analytical methods and their use. Although the experts noted a consensus that analytical methods are indispensable for fighting more complex forms of crime it appeared that despite the efforts that have been put into their dissemination to date they are still not commonly used and that the scope of their application differed throughout the EU. Some Member States have developed and are using very advanced analytical tools that are an example of how analytical methods could be intelligently employed for the benefit of investigation efficiency. It cannot be denied however that in isolated cases analytical work appeared to be hampered by privacy regulations or their interpretation.

The **seventh finding** relates to Europol's role in the co-operation and co-ordination process. It was a widespread practice among Member States to prefer the bilateral and multilateral channel when co-operating at an international level while Europol was mostly excluded. This might give rise to the assumption that the agency is suffering from an intelligence gap that has consequences on its capabilities to comply with the tasks laid down in the Europol Convention. As this has not been the subject of this evaluation exercise this question is presently studied in depth during the third round of mutual evaluations.

Yet it was observed that smaller Member States with limited staff resources were more willing to seek assistance from Europol for the support of operations.

## **5 SPECIFIC OBSERVATIONS**

### **5.1 General information and structures**

#### *5.1.1 National (anti-) drug strategies*

The drug problem in our societies can never be reduced to the criminal phenomenon alone and therefore always requires a multi-departmental and stringent response at the national level. Some Member States have consequently opted to set up drug strategies that appeared to fulfil such an objective and were therefore rated by the experts as a valuable model to be considered by those Member States that were relying on different approaches when planning their national effort to combat the problem of illegal drug consumption and trafficking.

Naturally, the national frameworks in which the anti-drug effort is currently planned and implemented are different within the Member States. However, the comprehensive drug strategies that have been set up have been rated as an excellent means for setting up objectives while at the same time allowing for flexibility when implementing them. Apart from that they are providing a yardstick for all law enforcement services as well as for employing monitoring mechanisms.

**Recommendation 1.:** The Council calls upon Member States to constantly evaluate their own strategic approach with regard to the anti-drug strategies and also to examine with attention some strategies that are in place in some Member States that have proven to be valuable instruments while taking due regard of the objectives contained in the EU-Action Plan on Drugs 2000-2004<sup>1</sup>.

#### *5.1.2 Central Co-ordinating bodies*

The drug issue in general and the action against drug trafficking in particular do require a high level of co-ordination among the key players involved and the evaluation teams have therefore noted the absence of central co-ordinating bodies in some of the Member States. This would appear to be contrary to the recommendation made by the Heads of State and Government in the Action Plan on Organised Crime, adopted by the Amsterdam European Council.

As stated before, responsibility to control the drug problem not only rests with the law enforcement services, namely police, prosecution and customs services which are themselves acting under the responsibility of different ministries within a national administration. Apart from them health and social authorities are usually sharing the responsibility, which increases the risk of uncoordinated efforts in areas of overlapping competencies. Therefore central co-ordinating bodies are an imperative means in order to ensure an efficient and effective thrust against drug trafficking and are perceived as indispensable to a concerted approach at Member State level.

**Recommendation 2.:** The Council calls upon those Member States that have not done so to establish central co-ordinating bodies for their drug policies as they constitute a tested instrument for a multidisciplinary approach when handling the drug problem.

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<sup>1</sup> Council document 9283/00 CORDROGUE 32.

### 5.1.3 *Definition of Organised Crime*

On some of the visits it was heard that the lacking of a definition of organised crime appear to have repercussions on the way in which law enforcement services were enabled to combat drug trafficking. As already laid down in the 1997 Action Plan one of the key prerequisites in order to fight crime effectively is a sound knowledge about the crime phenomenon. While some Member States have adopted legislation against organised crime on the basis of a definition of the phenomenon, others were in the course of doing so while the majority was not adhering to such a definition.

A unified approach as regards crime phenomena connected with drug trafficking that would most likely fall under the category of organised crime would therefore benefit from a standardised or at least comprehensive definition that encompasses the major features and would serve comparability and unity of action. The 2000 UN Convention against Transnational Organised Crime should be taken as the standard here by the Member States, Europol and other EU bodies.

**Recommendation 3.:** The Council recommends that work should be undertaken with a view to exploring the possibilities for a harmonised definition of organised crime that could facilitate a stringent response by the Member States in the areas that are pertinent to fighting organised crime.

### 5.1.4 *Training of prosecutors and judges*

Police and customs special training in drug matters appeared to impart a sound knowledge about the phenomenology to the individual officers. On the other hand however, the experts have noted on several occasions that judges and prosecutors that were entrusted with drug cases were lacking special training and technical awareness. Although no specific reason was identified for this it is feared that such deficit could affect the overall efficiency of the effort that has been put into investigations into drug trafficking by the appropriate services.

**Recommendation 4.:** The Council recommends that Member States review their training schemes for prosecutors and judges entrusted with drug crime in order to improve the overall efficiency of law enforcement when counteracting drug trafficking. This topic could be one that the European Judicial Training Network could examine.

### 5.1.5 *Models of regulated drug consumption on designated premises*

As part of the implementation of their drug policies a few Member States have decided to designate special premises for drug consumption. During the exercise it became apparent that, for the majority of Member States that were following another approach and that were sharing borders with the former, concerns about the effects of such "tolerated" drug consumption were voiced.<sup>1</sup> Furthermore it was felt by some Member States that such discrepancies between the Member States policies could be an incentive for drug tourism and even undermining of other Member States' efforts to fight drug trafficking. It was emphasised that different implementation of the law would send a wrong signal, particularly for the age groups that are likely to get addicted to recreational drug consumption.

**Recommendation 5.:** The Council recommends that the matter of premises designated for consuming illegal drugs that could be an incentive for "drug tourism" between the Member States be addressed by the Member States and, if appropriate, in the appropriate working parties of the Council in order to inhibit any adverse effects that could arise from different practices.

## 5.2 **Intelligence**

The quality of law enforcement intelligence largely depends on the information available and the analytical capabilities of the appropriate services. It therefore constitutes one of the core issues with regard to the tracking down of the perpetrators of drug trafficking. Some of the issues addressed in this report that may influence the intelligence process are genuinely related to co-operation matters and are discussed under this heading.

### 5.2.1 *Data bases*

Several findings have been made as regards databases. While the majority of the Member States have databases that contain dedicated information on drug related crime, the evaluation teams encountered isolated cases where such specific information was not available.

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<sup>1</sup> France and Sweden, which have extensively developed and intend to continue developing a risk reduction policy, subscribe to a health policy that excludes the encouragement of consuming prohibited drugs other than in thoroughly medicalised settings, and would draw attention to the slippage that occurs in such places, the disturbance of law and order that they can lead to and the conflict with drug use legislation.

The evaluation exercise has again revealed the need for centralised sound data bases in order to be competitive against drug trafficking that is mostly operating in an international sphere. For various reasons some law enforcement services were also using decentralised databases. However appropriate such an application may be to ensure a high degree of confidentiality or for other important reasons, a comprehensive database that can be accessed by analytical tools would minimise the risk of information gaps.

The discriminatory access of the individual law enforcement services that is usually confined to their own data bases was in some cases felt to be creating information gaps that could be avoided by granting access to all services that had to work on the same objective.

The flagging function installed in the databases of some law enforcement services was found to be helpful in order to avoid duplication of efforts created by ignorance about already ongoing investigations.

**Recommendation 6.:** The Council encourages Member States to consider common standards for databases at national level whose exploitation by different services could be beneficial in fighting drug trafficking while at the same time taking into account a future compatibility at the level of the EU. In this respect the Council reminds the Member States of its Recommendation of 6 December 2001 on the alignment of law enforcement drug and diverted precursors seizure statistics.

#### *5.2.2 Exchange of "soft" information*

More than once the issue of exchanging "soft" information and the absence of appropriate legal instruments was raised. In addition to the hard information, i.e. established facts, that is gathered and made available by the law enforcement services, this type of information constitutes a supplement serving a multitude of purposes and that can sometimes be decisive when conducting an investigation. Such information is sometimes readily exchanged bilaterally but an investigation member of the law enforcement services may feel in doubt about the extent to which such information could be exchanged and used in later proceedings. The practice of exchange of information varies also in the Member States where some "soft" information can be exchanged by police channels whereas the same type of information may require judicial co-operation in some Member States. It should therefore be considered to analyse the problem and find a coherent solution at EU level.

**Recommendation 7.:** The Council recommends that the exchange of "soft" information be analysed by the Multidisciplinary Group on Organised Crime with a view to reaching a coherent solution at EU level for the exchange and exploitation of such information.

#### *5.2.3 Access to airlines' and freight forwarder's databases*

Owing to the international nature of drug trafficking, air- and seaports are main gateways for certain illegal drugs into the EU. It is however characterised by speed and a large volume of passengers that evokes the need for extending the early warning capacity of law enforcement services at airports.

During their missions evaluation teams have visited some of the major airports in the EU. They concluded that law enforcement services there, customs in particular, would be put in a more advantageous position to screen passengers and cargo if they had access to airlines' and freight forwarders' databases that would provide them with time for a better risk assessment. While some law enforcement services had agreements with the appropriate companies, no such agreements were in place at other ports of entry. It was understood that the work at such focal points could benefit from formal memoranda of understanding (MoU) between law enforcement and private companies. Such MoU's would also assist the intelligence work at seaports where an enormous amount of container traffic is handled. Still the sheer volume minimises the available time for a screening of containers in the scanning facilities that has proven to be very effective and efficient.

**Recommendation 8.:** The Council calls upon Member States to consider the development of instruments (e.g. a model agreement) that would facilitate the conclusion of formalised agreements between law enforcement services at ports of entry and private companies engaged in passenger and cargo transport for a formalised access to their data bases, while respecting data protection rules.

#### 5.2.4 *Container scanning facilities*

The container scanning facilities installed in Calais, Rotterdam, Hamburg and Vaalima have proven to be an excellent means to efficiently detect contraband, drugs in particular. Still, while the installations constitute major investments and their operation requires a high degree of expertise and experience there was still room for technical and organisational improvement. The facilities are relying on a direct exchange of information between them so that they can consult each other swiftly. Yet it was not clear under which circumstances, mutual legal assistance or other, such exchange of information could be executed.

**Recommendation 9.:** The Council calls upon Member States to examine whether obstacles that might inhibit the swift exchange of information and expertise between the container scanning facilities can be removed and their co-operation enhanced in order to increase their efficiency.

#### 5.2.5 *Analytical capabilities*

The 1997 Action plan expressly referred to crime analysis as being one of the corner stones in fighting organised crime. The proper application of analytical methods, their training and the utilisation of the appropriate hard- and software therefore constitute a crucial factor that directly effects the way in which crime can be dealt with. One part of the evaluation was therefore devoted to look into the analytical capabilities of the Member States' law enforcement services.

Although promising initiatives have been carried out in the field of crime analysis training, some of them with a considerable input from Europol, the degree to which analytical methods are employed is still leaving room for improvement. While police services appeared to have a wider application of analytical methods and training, customs seemed to be underrated in this respect.

The use of up-to-date computer technology can considerably augment the analytical capabilities of the law enforcement agencies and are an indispensable necessity when analysing large quantities of data. While some of the services visited were employing very recent applications in order to exploit their analytical capacities others did not appear to use them at all. This fact however, left the evaluators with the impression that a lack of awareness regarding the capabilities of such applications led to notable differences in analytical quality throughout the EU.

This may have an effect not only on fighting drug trafficking but also other forms of crime and therefore any investment into crime analysis would pay off in a long-term benefit for the entire law enforcement community.

**Recommendation 10.:** The Council calls upon Member States to promote within their law enforcement services the widespread training and application of crime analysis, particularly its tools and methods, and benefit from the experience that Europol has built up in this field. Furthermore it recommends that the results from the Dublin organised crime conference, due to take place under the Italian Presidency in late 2003, should be taken as a basis for a discussion in the MDG on how to develop appropriate concepts of crime analysis that can be applied throughout the EU.

#### *5.2.6 Possible misuse of freight railway traffic*

During the visit of major border crossings comprising international railway lines it became apparent that the services on the ground had no intelligence as regards the possible misuse of cargo railway traffic for drug trafficking. Even if the potential risk could not be determined, it is a fact that the risk of being detected when using this means of transport is low and a misuse for the trafficking of drugs across borders seems likely.

**Recommendation 11.:** The Council recommends that the member States should look into the possible misuse of cargo railway traffic for means of drug trafficking in order to acquire more intelligence. This information should be pooled at European Union level, for instance via Europol.

#### *5.2.7 Financial intelligence*

Over the last decade the Member States have introduced new legislation to fight the financial aspects of crime, the laundering of the proceeds of crime in particular. In parallel either new agencies of an administrative type or specialised police units have been set up in order to deal with the suspicious transaction reports submitted under the obligation of the anti money laundering legislation. In some Member States FIUs are also judicial authorities.

While the exchange of information between the two types of units had repeatedly led to difficulties, particularly in some Member States, such obstacles appeared to have been removed at the time the evaluation had been completed. Depending on their nature the units are following different approaches when acquiring and processing financial information. Yet it did not emerge that this different approach had any adverse effect on the overall performance of the system. It has to be highlighted however, that in one Member State an administrative type agency had developed a particularly efficient system that enabled it to screen bulk data from financial institutions within a very short period of time, thus generating financial intelligence while at the same time meeting the demands of the financial sector for rapid processing. Several Member States took part in the FIU-net which enabled sharing of information between FIUs and this experience seemed to be satisfactory.

**Recommendation 12.:** The Council calls upon Member States to explore ways of how to further enhance the co-operation between their financial intelligence units in order to raise the quality of financial intelligence throughout the EU. The Member States that have not yet done so, should consider exploring to join the FIU-net.

#### *5.2.8 Financial investigations*

The majority of Member States do not have special legislation governing the conduct of financial investigations so that they usually fall under legislation dealing with other aspects of crime, e.g. economic crime. However, one Member State had introduced appropriate legislation for financial investigations and set up a specialised unit that is empowered to apply a whole range of measures that are destined at identifying, tracing and securing the assets. In another Member State a joint team of police and prosecutors has been set up with a similar objective although acting under different legal conditions. The experiences with units of this type have been reported to be very successful and have led to an increased confiscation of assets.

In an effort to deprive criminals from the proceeds of crime, many Member States have devoted considerable resources to training and the allocation of staff; yet it seemed that more efforts could be put into the financial aspect of an investigation and more emphasis be put on it. It was still found that investigators were lacking the awareness of the importance of financial investigations as part of an investigation into drug trafficking or that the emphasis was laid on the seizure of the drugs alone.

It should not be denied however, that also the requirements of the day-to-day work in drug cases governed by scarce resources sometimes resulted in allocating a lower priority to the financial aspect of a drug investigation.

Many Member States have developed strategies on how such shortcomings can be counteracted either by making use of specially trained investigators that are members of an investigation team from the beginning of an investigation or by a multidisciplinary make-up of an investigation team.

**Recommendation 13.:** The Council encourages Member States to exchange information about existing units that specialise in identifying, tracing and securing of assets with a view to establishing such units and to set up, where appropriate, investigative teams with a multi-agency approach. Member States should also examine the legislation on financial investigation adopted by some Member States with a view to drawing from the experiences in this field.

### **5.3 Special Investigation techniques**

Most of the Member States had a comprehensive legal framework governing the application of the major special investigation techniques like interception of telecommunications. However, it was found that for the employment of undercover agents or the conduct of controlled deliveries no specific legislation existed in the majority of Member States.

In some of the Member States the absence of such regulations had provoked doubts within the law enforcement services with regard to their employment and subsequently led to discrepancies in their utilisation. The evaluation teams learnt that when law enforcement was in doubt about the use of a technique they would rather abstain from utilising it.

One Member State has laid down the utilisation of special investigation techniques in a dedicated legal framework that was rated as very helpful by the practitioners.

*Covert investigation*

**Recommendation 14.:** The Council calls upon Member States to review their legislation on special investigation techniques in order to provide the law enforcement services with a reliable legal basis for the application. Member States should, *inter alia*, implement Article 14 of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union. Furthermore, with a view to the prevalent cross-border nature of anti-drug operations the Council calls upon Member States to develop common standards for the application of special investigation techniques. In the context of Article 30.1 (d) of the Treaty on European Union, Member State experts together with the Commission and Europol are invited to study these techniques, taking into account the work already done by Europol in this field. This could lead, where appropriate, to administrative or legislative initiatives where these may be necessary to facilitate cross-border operations.

#### 5.3.1 *Controlled deliveries and controlled money deliveries*

Controlled deliveries although being a well-known means to support an investigation were not applied in the same way throughout the EU. While in some of the Member States extensive use was made of controlled deliveries the evaluation teams also encountered countries where - despite of a high risk for drug trafficking - this technique was barely used at all. This was the more surprising as the Europol manual for controlled deliveries is facilitating their conduct. Although it was not the task of this exercise to rate the effectiveness of the instrument *per se* those law enforcement services that made ample use of it during their investigations into drug trafficking seemed to consider it as being of a tactical advantage.

Controlled money deliveries, even if they were feasible from a legal point of view in most of the Member States, had only rarely been executed as a tactical means during an operation against drug trafficking, mainly because of a lacking awareness from the law enforcement side. However, the tracing of the financial proceeds of crime in a drug investigation could be an important step to unveil the organised character of drug trafficking and its masterminds.

**Recommendation 15.:** The Council calls upon the Member States to examine their practices regarding the use of controlled deliveries and controlled money deliveries in investigating and fighting cross border drug trafficking and recommends that, on the basis of a study carried out in the context of Article 30.1 (d) of the Treaty on European Union by Member State experts together with the Commission and Europol, the appropriate Working Party should analyse the reasons for the different use that is made of this technique in the Member States. Account should be taken of the work already done by Europol in this field. Where appropriate, a legislative initiative in this area could be considered. Member States should at least implement Article 12 of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union.

*Controlled deliveries*

### *5.3.2 The impact of the technological and economic changes on the interception of telecommunications*

In general terms the majority of telecommunications interceptions in the Member States is drug-related and therefore the liberalisation of the telecommunications markets during the last decade has had some major implications on law enforcement's needs when intercepting telecommunications.

While it can be concluded from the information received that law enforcement seems to have adapted to the problems linked to the move from a monopolised telephone market to a larger variety of operators when trying to identify a particular telephone number, other problems related to marketing models of the telecommunication companies that have a direct effect on investigations in cases of drug trafficking have shown their effects on the law enforcement services.

Law enforcement has become a budgetary issue where fees for identification of telephone numbers and charges for the lease line apply that can be quite substantial.

Furthermore different technical standards of operators in the Member States have created unnecessary obstacles for law enforcement: in one case for instance it was temporarily impossible for law enforcement to intercept foreign mobile telephones on the territory of the Member State in question because the law enforcement service had opted for a particular standard.

Another serious problem had emerged from the practise in some Member States where no identification is required when acquiring a pre-paid card for a mobile telephone number. Drug traffickers have been quick at identifying this loophole and the criminals have used a multitude of such cards making it very difficult for law enforcement services to track them down. - The Draft Council conclusions on the tracing of the use of prepaid mobile telephone cards<sup>1</sup> prepared by the Police Co-operation working party in order to facilitate criminal investigations can therefore be considered as an immediate response to the problem.

Another impact is directly related to the rapid technological progress. It can by no means be excluded that the use of sophisticated technology in the course of the communications process, e.g. its encryption will not be used for means of drug trafficking and other forms of serious or organised crime. The entire range of computer applications and their possible use for criminal activities are a challenge for law enforcement services that has to be reckoned with and that will require a high degree of training, awareness and co-operation among the specialised branches of the individual law enforcement services. As a result it might become necessary that technical capacities will have to be pooled in order to keep track of the technological progress and its potential criminal misuse.

**Recommendation 16.:** The Council calls upon Member States to provide the law enforcement services with effective interception capabilities, whilst safeguarding the fundamental rights of persons.

**Recommendation 17.:** The Council calls upon Member States to co-operate with the industry, in particular the telecommunications sector, with regard to a possible misuse for criminal purposes, whilst safeguarding the fundamental rights of persons.

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<sup>1</sup> Council document 7808/03 ENFOPOL 121 OC 130.

## 5.4 Co-ordination and co-operation

As already outlined in the key findings some vital deficits have been encountered in areas that mostly had their origin in the structure of the services and departments. Owing to the multitude of actors that have competencies regarding the drugs issue in general and the crime aspect in particular, co-ordination and co-operation have to be regarded as decisive factors for a successful effort of law enforcement services in combating drug trafficking. To this should be added the international dimension with an interaction of structures that all have their national arrangements. These arrangements do not necessarily facilitate the process.

### 5.4.1. Co-operation at national level

While on one side it became apparent that in a couple of Member States dissonances existed between the different law enforcement services that, although not openly displayed, were likely to produce adverse effects on their spirit to co-operate and co-ordinate, other Member States had successful models of co-operation between e.g. police and customs services operating, either in the form of dedicated joint or even multidisciplinary teams that also had a judicial component in their outfit.

In some Member States, where the customs did only have limited competence to conduct investigations in drug trafficking cases, the rivalry aspect between the customs and the police became particularly apparent. While the information received about this aspect should be weighed carefully, it cannot be neglected that the customs services in the Member States concerned were highly professional within their remit. However, the rivalry disrupted the co-operation between the services leading to the assumption that a changed environment would provide for a bigger efficiency.

Underlying tensions of a similar nature were encountered in other Member States between the different police services and customs while barely any attempts were noted during the evaluation to identify possible areas of co-operation between the services.

The fact that these were no isolated cases underlines the need for a different approach as concerns the employment of the different law enforcement services and their expertise regardless of their attachment to a particular ministry.

The situation at international airports where the services find themselves in a special environment requires a particularly high degree of co-operation at national level that is usually maintained, even in those Member States where co-operation outside those focal points is affected by the circumstances that have been described above. At the airports the main difficulties were rather concentrated on the possibility of the customs to co-operate with international partners at a pace that can match the speed of air-transport.

**Recommendation 18.:** The Council calls upon the Member States to organise their different law enforcement services engaged in counteracting drug trafficking in a manner that enables them to make a maximum use of their capabilities.

Law enforcement services in a number of Member States were aware of the possible positive effects that could be derived from joint training initiatives and joint intelligence approaches between police, customs and prosecution services that could not only improve the effectiveness but also forge a common spirit. Yet only a limited number of Member States had taken steps in order to implement such initiatives.

By again taking into account the overall impression from the evaluation of the different law enforcement services that are entrusted with particular tasks in fighting drug trafficking both at national and EU level it became apparent that there is ample room for improving the organisation of training, intelligence approaches and other matters that serve to fulfil a common objective. While police, customs and prosecution services of the Member States are supposed to fight international drug trafficking they remain to a large extent confined in their own service-bound training and intelligence structures.

It was interesting to note that particularly those Member States where the individual services do not possess a large number of staff had begun to contemplate or had already introduced joint training programmes for the different law enforcement services.

**Recommendation 19.:** The Council calls upon the Member States to look into possibilities to improve the partnership between the different law enforcement services with a view to enhance the commonality in training and intelligence issues.

It was interesting to note that predominantly smaller Member States or those with a smaller population were seeking ways of how to make a maximum use of their law enforcement services by having them closely work together for the common objective. The examples from a number of Member States have also shown that co-operation models of different nature can be very useful and display a high degree of effectiveness.

In some Member States teams comprising of police and customs or other services have been tasked with investigating cases of drug trafficking. While different models are in operation the experience has been positive for a number of reasons. Firstly the close collaboration in a team ensures the maximum use of each service's special capabilities and facilitates access to the appropriate sources of information. Secondly the short communication channels avoid the loss of information and assist co-ordination and thirdly, depending on the model employed, they can provide for a flexible response. One such model encountered also included a prosecutor that added to the efficiency of the team. It was noted that such teams, if compared to the conventional division of competencies among the individual services, were showing much more efficiency.

**Recommendation 20.:** The Council encourages Member States to make an increased use of multidisciplinary teams in order to exploit the specific expertise of the different law enforcement services while at the same time improving the mutual understanding. Furthermore the Council encourages the setting up of joint investigation teams under the Council Framework decision of June 2002<sup>1</sup>.

#### *5.4.2. Co-operation at international level*

International co-operation was still not optimised as not all Member States had established a central contact point. Particularly at the beginning of an investigation the multitude of law enforcement agencies throughout the Union can render it into a haphazard task to identify the appropriate co-operation partner.

As regards co-operation at international level it was noted that while the law enforcement services

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<sup>1</sup> OJ L 162 20.6.2002, pp. 1-3.

admitted that they would usually chose their channel of communication according to their needs, they typically preferred tested bilateral forms of co-operation while Europol was rarely included. While on one hand, given the number of bilateral agreements concerning the exchange of information between the contracting parties that have been concluded by the Member States it is no surprise that a preference for bilateral forms of co-operation existed, it is evident that these practices have an influence on Europol's capability to fulfil the tasks that are assigned to it in the Europol Convention.

However, by taking into account that one of the reasons for the establishment of a European Police Office (Europol) is to improve the effectiveness and co-operation of the competent authorities in the Member States<sup>1</sup> in the areas of crime for which Europol has received a mandate, unlawful drug trafficking being one of them, the present practice leaves room for improvement. It was noted that this deficit was mostly to be attributed to a lack of awareness, particularly in the larger Member States, as to what services Europol can actually render vis-à-vis the Member States' police and customs services.

**Recommendation 21.:** The Council calls upon the Member States to draw upon the conclusions that are expected from the third round of mutual evaluations looking into the exchange of information and intelligence between Europol and the Member States and among the Member States respectively in order to facilitate Europol's task.<sup>2</sup>

#### *5.4.3. Drug liaison officers*

On a number of visits the law enforcement services of the Member States suggested that it would make sense to review the deployment policy with regard to drug liaison officers of the EU Member States with a view to sharing resources and co-ordinate efforts. Practices in some Member States have proven that it can be useful and feasible to share liaison officers of the different services under certain circumstances. The long-standing Nordic co-operation on sharing liaison officers on nearly 40 locations globally provides a good example on how such a mechanism can work in practice. The findings of the evaluation therefore confirm the need for an instrument that has meanwhile been created by a Council Decision<sup>3</sup> on the common use of liaison officers posted abroad by the law enforcement agencies of the Member States taken in February 2003.

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<sup>1</sup> Cf. Art. 2(1) of the Europol Convention.

<sup>2</sup> Council document 11679/3/02 CRIMORG 71 REV 3.

<sup>3</sup> Council Document 15525/02 ENFOPOL 157 COMIX 708.

## 6 FOLLOW-UP TO EVALUATIONS

As in the first round of mutual evaluations on mutual legal assistance in criminal matters, the experts addressed precise recommendations to the Member State inviting them to correct, alter or to amend particular aspects of their law enforcement systems with regard to fighting drug trafficking. Furthermore the experts made recommendations where they identified practices that they deemed to be beneficial for the other EU Member States.

The value of the peer evaluation system lies largely in the process itself and in the incentive it provides to take comments into account. With this in mind, the follow-up to evaluations should be envisaged as a request to the authorities of the Member State concerned to describe either the action taken since the evaluation to remedy the problems pinpointed by the experts, or the reasons for their inaction.

As the evaluations proceeded, the experts were moved to comment that Member States were taking steps to amend their systems governing law enforcement's effort in combating drug trafficking. Major efforts have sometimes been made to catch up. It would be useful to maintain this momentum. The follow-up to evaluations might serve this purpose.

It was interesting to note that some of the findings and recommendations of the individual country reports and the summary reports have already resulted in concrete projects that are currently under discussion in the Council.

**Recommendation 22:** The Council asks the Presidency to prepare a letter on the basis of the conclusions of the evaluation report on each Member State and to forward it to the Member States according to a timetable reflecting the original order of evaluations; each State would then have to describe the institutional, legal, practical, administrative and logistical measures it had taken or will take in response to the recommendations addressed to it. The outcome could then be passed on to the Council by means of a Presidency report to be submitted by the end of the first semester of 2004 containing, where appropriate, recommendations.

## 7 THE EVALUATION MECHANISM

Article 10 of the Joint Action of 5 December 1997, which is the basis for the evaluations, calls upon the Council to examine the detailed rules and scope of the mechanism and, if appropriate, make adjustments to the Joint Action.

Throughout this second round of mutual evaluations, the mechanism in place has given full satisfaction. Though its provisions as such have not created any difficulties the overall process has been slowed down as some of the missions had to be re-arranged at the request of the Member States to be evaluated for exceptional reasons. Although such requests can be accommodated they have had their implications on the availability of experts as well on the allocation of translation resources and therefore require a high degree of flexibility. It therefore should be noted for future evaluation exercises that it is of importance that Member States adhere to the agreed schedule.

Meanwhile, the third round of mutual evaluations on exchange of information and intelligence between Europol and the Member States and among the Member States respectively is in progress.

## 8 CONCLUSION

This second evaluation exercise is mirroring the conclusion that has already been made at the end of the first evaluation round. While the evaluation procedure is certainly a constraint and demanding on resources, which the Member States sometimes find difficult, its critical aspect is very useful, given that it is in the hands of peers, and indeed to some extent irreplaceable. The second exercise has confirmed that this tool works well.

On the basis of a report from the Presidency before the end of 2005, the Council should take note of progress made following implementation of the recommendations set out in this report.

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Marion G. Walsh/JUSTICE  
14/11/2005 16:27

To bent.mejborn@consilium.eu.int  
cc David G. Walker/JUSTICE@JUSTICE, Michael D. Walsh/JUSTICE@JUSTICE, paddy\_terry@ag.irlgov.ie, Caoimhin.Smith@dcmnr.gov.ie, Deirdre M.  
bcc  
Subject Fw: Bent - can you help please

Bent

I am well aware of the pressures you have been under in the past week and a half (even on the EEW alone) since I send you the e-mail beneath. The Government are expected to approve the Bill tomorrow which will, amongst other things, give effect to the 2000 Convention and as the Bill (subject to a few outstanding issues - of which the query beneath is one) is to be published in a few days I would be really grateful if you can find some time over the next day or two to have a look at the issues I have raised. I realise this is a difficult request, particularly with Article 36 this week but if there is anything you can do I would be very appreciative. Thanks.

Marion

— Forwarded by Marion G. Walsh/JUSTICE on 14/11/2005 16:21 —

Marion G.  
Walsh/JUSTICE  
03/11/2005 13:36

To bent.mejborn@consilium.eu.int  
cc David G. Walker/JUSTICE@JUSTICE, Michael D. Walsh/JUSTICE@JUSTICE, paddy\_terry@ag.irlgov.ie, Caoimhin.Smith@dcmnr.gov.ie, Deirdre M. Fanning/JUSTICE@JUSTICE  
Subject Bent - can you help please

Bent

Hope you are well and that you enjoyed your holiday weekend and that the UK Presidency are not driving you all too hard. At long last we are almost at the stage when we will publish our Criminal Justice (Mutual Assistance) Bill, which I mentioned to you before. This Bill will give effect to 7 mutual assistance instruments and amend the aspects of our Criminal Justice Act 1994 dealing with mutual assistance matters. The Government are scheduled to approve the Bill for publication at their meeting on Tuesday 15 November. We are doing a final tweaking to the provisions to give effect to the interception provisions in the 2000 EU MLA Convention over the next few days. It is in this respect I am hoping you might find a minute to clarify two particular points for me, as set out beneath. Unfortunately I cannot clarify what was intended at the time of negotiation with personnel in Ireland as the person who negotiated the Convention on behalf of Ireland has retired.

#### 1. Article 19.1 of the 2000 Convention

Article 19.1. states that MS *shall* ensure that systems of telecommunications operated via a gateway on their territory ....*may* be made directly accessible for the lawful interception by that MS...". The Explanatory Report to this Convention states that paragraph 19.1 "contains the rule which specifies that the MS in whose territory the gateway is situated *permits* the installation of remote control equipment". We are unclear as to whether Article 19.1 puts an obligation - in terms of compels - persons to put in place such remote control equipment or whether the provision is permissive. The provision in the Convention appears to suggest a compulsion whereas the Explanatory Report appears to suggest the opposite. Can you throw any light on this for us?

#### 2. Article 19.3

This Article is also causing us some difficulty in terms of transposition, when read in conjunction with Article 19.2. By way of concrete example we read Article 19.2 to provide that if a subject is present in Ireland interception may be organised by Ireland though a service provider in Ireland without involving

main where the gateway is. Article 19.3 then goes on to provide that this arrangement shall also apply where the interception is carried out upon a request made pursuant to Article 18.2.(b). Again by way of concrete example following on from the previous scenario outlined this provision would suggest that the subject is in Spain and his communications can be intercepted there. But in Article 19.2 subject is in Ireland. If we make a request to Spain how does this tally with Article 19.2? I understand there may also be some differences between the English and the French versions of the Explanatory Report on this provision. The English text says this paragraph allows *a requested MS* to use remote access equipment on behalf of another MS to intercept. I am told the French text permits *a MS* - not a requested MS. Can you throw any light on this?

#### Explanatory Report

On a separate note, the final paragraph of the Explanatory Report dealing with Article 19 states that the Council, when adopting the Convention, made a declaration specifically providing that the MS shall consult each other on the practical and technical aspects related to the application of the Convention. Would you by any chance know from your dealings with MS if there has been any such consultation? Maybe it is too early yet as some MS still have to transpose this Convention and it may be too early for a lot of problems to have emerged with those that have already transposed the Convention.

Bent, I know you have a lot on your plate at the moment but if you can shed any light on this I would be most grateful.

Kind regards

Marion



"Mejborn Bent"  
<bent.mejborn@consilium.eu.int>

18/11/2005 10:26

To "Marion G. Walsh" <Marion\_G.\_Walsh@justice.ie>, bent.mejborn@consilium.eu.int  
cc "David G. Walker" <DGWalker@justice.ie>, "Michael D. Walsh" <MDWalsh@justice.ie>, paddy\_terry@ag.irlgov.ie, Caoimhin.Smith@dcnmr.gov.ie, "Deirdre M. Fanning"  
bcc

Subject Re:Bent - can you help please

Marion,

My apologies for replying only now, but as you may imagine the UK does not let us sleep a lot, and your questions are rather delicate to answer, so I needed to reflect a bit.

It is quite impressive that you implement 7 instruments in one go - I wish you the best luck with that.

On your questions:

1. I have so far understood Article 19(1) in the way that there is an obligation for a gateway Member State to allow under its law the installation, at the gateway or elsewhere on its territory, of equipment necessary for establishing remote access from another Member State for the purposes of interception. But in my view it does not provide an obligation for the gateway Member State to ensure that such equipment is actually installed. Article 19(2) specifies under which circumstances a non-gateway Member State may access a gateway by remote control. Again, the non-gateway Member State has no obligation to be able to access the gateway by remote control from its territory. But where it is technically possible on the basis of installations at the gateway Member State and the non-gateway Member State, interception is allowed under specified conditions. In particular, the subject of the interception should be present in the Member State intercepting by remote control. Article 19(3) expressly allows for interception by remote control under the conditions in Article 19(2) also where that happens on the basis of a request from a third Member State.

2. I think your second question is answered already above. But just to be clear:

First situation: The gateway is in Spain and Ireland wants to intercept a subject on Irish territory. Provided the necessary technical installations are in place, Ireland can under Article 19(2) do this by remote control without involving Spain. And under Article 19(1) Spain can not outlaw the installation of technical equipment at the gateway in Spain for this purpose.  
Second situation: The gateway is in Spain, the subject is in Spain and and you want Spain to intercept for you. This falls under Article 18(2)(b). Article 19(2) and (3) are not relevant in this case.  
Third situation (introduced by me): The gateway is in Spain, the subject is in Germany and you want Germany to intercept. Germany can access the gateway

in  
Spain by remote control. You make a request to Germany under Article  
18(2)(b).  
Article 19(3) provides that Germany in this case can apply Article 19(2) as  
a  
basis for intercepting (intercepting for Ireland of a subject present in  
Germany by remote use of the gateway in Spain).

On your last point (practical and technical aspects) I have no information  
at  
present.

I hope this is useful and again apologize for being slow, but it was rather  
complicated to answer these tricky questions and in addition we are  
extremely  
busy. I preferred to give you a good answer rather than a fast one.

Have a nice weekend and please let me know that you have received this.  
Best regards  
Bent

Marion G. Walsh (3/11/2005 14:36):

>Bent

>

>Hope you are well and that you enjoyed your holiday weekend and that the  
>UK Presidency are not driving you all too hard. At long last we are almost  
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>shed any light on this I would be most grateful.

>  
>Kind regards

>  
>Marion

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