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RECENT TRENDS OF ORGANISED CRIME IN EUROPE: ACTORS, ACTIVITIES AND POLICIES AGAINST THEM

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I. EUROPE: A CROWDED MARKET PLACE AND CROSSROADS

The internal situation of the European Union countries is characterised by the relevant and stable presence of Italian organised crime groups, not only in the country of origin. But also in France, Germany and sporadically, even in Austria and the United Kingdom. It is also characterised by the development of “domestic bilateral organisations” operating from country to country, e.g between Belgium or Great Britain and the Netherlands, for taking advantage of the opportunities offered by drug price differences in these countries. In other countries there is the presence of domestic organised groups (gangs), specifically in France, Great Britain and Spain.

The European Union is also the crossroads for other criminal groups operating internationally. The west Colombian cartels are still predominant in the importation of cocaine, helped by national criminal groups. Galicians in Spain and mafia in Italy co-operate with the cartels to import and distribute cocaine in the whole of Europe. From the south, Nigerian groups characterise the drug traffic and exercise their expertise in the area of fraud. Other groups from the Maghreb area are involved in hashish importation. From the East, Chinese Triads have established stable communities in Spain, the Netherlands, the United Kingdom, Italy, Austria,

Belgium and Portugal, Their main activities of drug trafficking, alien smuggling, local extortion, illegal gambling and prostitution rackets are interrelated. Turkish and Pakistani groups control the trafficking of heroin from the Middle East and Central Asia, through former Yugoslavia or other Eastern countries.

Part of Europe’s modern criminal history is the threat of the progressive expansion of organised groups from eastern and central Europe, mainly from Russia. But to call these groups “Russian” means keeping an old label for a new product. The process of criminal fragmentation that is happening today in Russia, in other CIS Republics and the states of the former Yugoslavia should be considered with extreme attention, especially for the future implications it could have on the European geography of organised crime. Talks with national law enforcement agencies in many European countries confirm that groups of Russian, Polish, Czech, Rumanian and former Yugoslav origin are active in Spain, Germany, Finland, Austria, the United Kingdom, the Netherlands and Sweden. Their main activities are drug trafficking, the export of stolen cars, alien smuggling and prostitution.

II. MULTIPLICATION OF TRAFFICKING ROUTES AND RAMIFICATIONS OF EUROPEAN KEY POINTS

The organised crime development in Europe shows a progressive multiplication of trafficking routes either by sea, air or land towards Europe and the ramifications

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from European key points to outside countries. Spain and Italy are still the major entry points for cocaine in Europe, along with Portugal. Spain and Portugal are, however, also increasing their importance as entry points for heroin coming from the south Asia area and Pakistan, via African routes (touching among others Angola, Mozambique and Cape Vert). Cocaine and heroin from Spain spreads into Europe through France or by sea from Italy. In both cases the Italian mafia plays a leading role in controlling the deliveries.

Transshipments of heroin, Coming from central Asian regions and Middle Eastern countries, and cocaine from South America, are also conducted by Nigerians via air through the main international airline points. Also Turks and Kurds are involved in heroin trafficking from the production points to Germany and the United Kingdom, passing through the Balkan routes and Greece. Heroin distribution inside these European Countries is carried out by specialised Turkish networks within their immigrant communities.

The entry of Eastern organised crime into the international market has changed and increased the routes traditionally used. Russia and the other eastern European regions are increasingly becoming the new transit routes for drug trafficking as well as for other criminal purposes, such as car theft from Germany, The UK and the Netherlands, and illegal aliens smuggling from South-East Asia. The Baltic States, Finland and Sweden are the main points of entry into Europe from the North. Two main migration routes lead through Poland. The eastern route, controlled by Russian organised crime, is used to transport Asians, mainly Armenians, Indians, Afghans and Africans (mostly Somalis, Algerians and Nigerians). The southern route is most often used by

Balkan residents, mainly Romanians. The eastern route starts in Moscow, From Where the Asians and Africans take a train to Belarus and are then transported by car to the Polish border with Lithuania, or to the Ukraine, and finally into the European Union.

Due to consolidated interaction among Russian, Chinese and Vietnamese gangs, Austria has become a transit country for heroin coming from the central Asian regions and for cocaine arriving via central Europe and Russia. In the south of Europe, Albania has replaced the traditional transit route used through Yugoslavia for drug trafficking. This route is also used for aliens being smuggled into Italy, as a point of entry into Europe. France is a transit route for hashish originating in South-West Asia and North Africa. Ireland, due to its coastal extension, is another entry point for drugs (hashish from North Africa) destined to the United Kingdom and continental countries.

Ports and airports in Europe are the main points of ramification inside and outside Europe. Frequent examples show Nigerian criminals, specifically active in this context, as importers of cocaine and heroin along routes involving Lagos (Nigeria), London, Athens, Antwerp (Belgium) and other main international airline points. They also act as exporters towards the United States (Chicago) and Canada (Toronto). Part of the heroin imported by Nigerians and the hashish coming from South West Asia and Northern Africa, first crosses France, then is re-exported towards other European and North American or Canadian markets. Opium also enters through the French borders and, after being refined locally, is exported as pure heroin.

In the Netherlands, local networks are becoming the main producers of synthetic drugs in Europe. From here they are

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exported through new routes leading out of the European Union, utilised also for trade in marijuana and hashish, which is still flourishing. Several internal routes are designed to transit synthetic drugs produced in the Netherlands, and amphetamines produced in Poland, into Sweden, Finland and other European countries via Dutch, Belgian and Polish networks. Also Belgium is a consumer market for synthetic drugs and trafficking is carried out through co-operation between rooted networks of Belgian and Dutch citizens.

III. ORGANISED CRIME TRENDS IN THE EUROPEAN UNION

Analysis of the interaction between the patterns of organised crime money laundering cycles and patterns of anti-money laundering responses allows us to outline present trends. In this section, changes in opportunities and mutations in the structure of criminal organisations will be considered. Both variables are relevant in terms of policy implications because their modification through more effective policies could result in a reduction of the extension of the organised crime problem.

A. Developing a Mix of Illicit and Legitimate Businesses

The traditional distinction between illicit and legitimate activities, with reference to organised crime, is becoming less evident in the *modus operandi* of organised criminals. At the same time, the distinction between what is criminal and what is not becomes more and more vague. The escalation of traditional criminal activities (drug trafficking) and of the investment in legitimate industries (the construction or tourist industry) of the proceeds generated by criminal activities is in a *continuum*.

Criminalisation of money laundering has solved the problem of distinguishing between what is formally criminal and the investment that becomes criminal because of where the proceeds come from. Organised crime and economic crime become more closely linked, and the future trends of organised crime tend towards those productive activities where opportunities are big, risk is lower and the organisation required from criminals reaches high complexity. Some of these activities are outlined in the following paragraphs.

Car theft has become an extensive problem in the European Union, where the number of stolen cars almost tripled between 1989 and 1993. A good indicator of the quantity of vehicles involved is the number of missing cars reported and never recovered by the police. Based on the first national crime statistics for 1993, it can be estimated that last year some 250,000 passenger cars disappeared without trace in the European Union.¹ The stealing of cars by Polish, former Yugoslav and Russian criminal networks has become a particularly profitable market because of the wide range of expensive cars "offered" especially in countries such as Germany, the Netherlands and Finland, and because of the huge demand for stolen cars coming from countries such as the former Soviet Union, the Asian states or North Africa. From Poland the vehicles are taken to the Baltic republics, or the Ukraine, to Russia, the Caucasus region or Kazakhstan (the nations that have emerged from the Soviet Union are a common destinations for the flourishing traffic in stolen luxury cars and sport or utility vehicles²). Bulgarian and Russian criminal groups have become a major force in this particular area of cross-border crime, together with indigenous crime groups who carry out the theft and rebuild the cars to give them a new identity. The results are evident in the consumer

states. While less serious than some of the other activities of organised crime, this is an additional source of revenue (often mixed with organised insurance fraud), helping these groups to consolidate their position in certain countries. In those cases, co-operation of criminal syndicates with the military is of special importance. Until recently, the main military air transportation centre was situated on Polish soil. Thieves steal cars in Germany and drive them to Poland. Then the cars are put on board military transportation and flown to Russian military airports. Russian companies which run the business are not necessarily part of the criminal ring, and sometimes they are even unaware (or prefer to be unaware) of the real origin of the cars, though, of course, the majority at least guess where the cars come from. Practically, all Russian dealers in foreign cars insist on receiving already renovated cars from aboard. In cases of stolen cars (as opposed to genuine second-hand cars) the renovation takes place in Poland, the Baltic Republics and, on rarer occasions, in the Czech Republic, Slovakia or Hungary.

Since 1988, the counterfeit industry has considerably increased the sophistication of its products and, in some instances, counterfeit credit cards have been of better quality than the genuine cards they purport to be.³ The American Bankers Association (ABA) and the International Bankers Association (IBA) have expressed concern over the extensive use of computer technology to counterfeit corporate cheques, bonds, securities and negotiable instruments of governments and corporations. The counterfeits are virtually indistinguishable from the genuine items. In addition to counterfeit currency, bonds and other monetary instruments, there has been an escalation in the international production and fraudulent use of counterfeit access devices: commercial

credit cards, telecommunications, computers, identification documents.⁴ The number of cases of counterfeit currency in western Europe seems to have tripled in 1993, compared to 1991.⁵ In 1992 and 1993, printed counterfeit versions of the new one hundred and two hundred Deutschmark notes were discovered, coming from Poland and Italy. Counterfeit money is becoming big business in eastern Europe. The bleak economic outlook coupled with an unstable currency and high rate inflation, have led to the Deutschmark and the US dollar being used in place of the local currency in several Newly Independent States where even basic products can only be obtained with foreign currency. Such a situation provides ideal conditions for the production and distribution of counterfeit money.

Frauds against the financial interests of the European Union are a traditional source of illicit proceeds from the exploitation of legislation or from the lack of domestic controls. These criminal activities are not only carried out by professionals in the legitimate industry at the margin of their business but also by extensive organised crime networks, which, in Belgium, the Netherlands, Portugal and Italy, have grown into well-established criminal trading communities. On the expenditure side, in 1995 8% of the cases accounted for 74% of the amounts at stake. These figures lend further support to the Commission's belief that fraud against the European Community is not a question of petty pilfering but of large scale organised financial crime.⁶ They intertwine with normal trade and industry and use their facilities to sell products and to launder profits. Frauds occur at different stages of the criminal process. Instruments such as front companies could either generate illegal proceeds from fraud, or they could be used to launder proceeds from other crimes such as corruption. The number of frauds against the financial

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interests of the European Union is increasing, although we do not know if they are increasing in the number of those committed or those reported. Data recently produced by the Commission of the European Union⁷ shows the dimension of the phenomenon and calls for more attention to be paid to the problems linked with international frauds, international organised crime and money laundering. This criminal phenomenon is not restricted to food or agricultural products but it involves goods of every kind through a wide range of more or less sophisticated methods. Other kinds of fraud, carried out by the same organisations, are VAT frauds and generally a wide range of financial and commercial frauds.

Criminal organisations are engaged in the massive smuggling of illegal aliens into the European Union from poor regions such as North Africa, eastern Europe, the former Soviet Union, Asia and South-East Asia. The Russian mafia group that controls the route makes an estimated \$12 million a year on this traffic.⁸ Most illegal immigrants coming from the East try to enter Poland through the porous, 102-kilometer Lithuanian border. In the first six months of 1995, border guards stopped 341 people in 14 groups, mainly from India, Pakistan, Somalia and Nigeria.⁹ The Southern route is plied mainly by Romanian, Bulgarian, Turkish and former Yugoslav citizens. Most of them arrive legally in Poland, taking advantage of an international agreement on visa-free tourist traffic.¹⁰ In Poland the government estimates that there are 100,000 migrants waiting to be smuggled into Germany.¹¹ German officials are collaborating very closely with the Polish government to tighten controls along the border, but the smugglers are diversifying their routes: Other landing places of choice are Mediterranean ports such as Marseilles and the coastal border in Italy. For the year

1993, the International Centre for Migration Policy Development (ICMPD) in Vienna estimated that migrants from between 100,000 to 220,000 in number had used the help of smuggling syndicates more or less intensely in one or several phases of the transfer, in order to reach a western European state. The estimate by ICMPD is based on the assumption that between 15% to 30% of immigrants (between 250,000-300,000) entering Europe illegally have used the traffickers and that between 20% to 40% of those requesting asylum without founded rights (estimated at 300,000) have done the same. On the assumption that immigrants pay traffickers sums between \$500 USD (price for crossing of a west European or Middle Eastern border) to \$25,000 USD (for bringing Chinese people from China into the USA), ICMPD believes that every foreigner who reaches western Europe with the help of traffickers, pays an average amount of \$2,500,USD to \$5,000USD. On the basis of this calculation, ICMPD finds it realistic to estimate the profit of the traffic syndicates for that year as a minimum of \$100 million to a maximum of \$1.2 billion USD. According to ICMPD, the world profits in this criminal sector for the same year was around \$5 billion USD to \$7 billion USD.¹²

This phenomenon has two effects, not only is it a threat to the basic ingredients of national sovereignty, it also places the immigrants themselves in jeopardy.¹³ These would-be immigrants are highly vulnerable, and women in particular are often forced into sexual slavery in order to pay off their debt to the criminal smuggling organisations. In fact, the increase in the smuggling of aliens is directly connected with prostitution. Experts estimate that more than 10,000 young women have been recruited in east European countries.¹⁴

In Europe, considerable alarm has been

raised by nuclear materials trafficked by countries belonging to the former Soviet Union. Although it is almost clear that for the moment, rather than criminal organisations, the traffickers are greedy freelancers, traders, adventurers or opportunists¹⁵, looking for a demand in the area. It is likely that in the future, criminal organisations will enter this market for extortion purposes. If purchasers cannot be found and the material is on hand, then extortion may appear particularly attractive. There are currently several hundred tons of weapon-usable fissile material under inadequate physical security and material control in Russia. Kilogram quantities of weapon-usable fissile materials have been stolen from institutes in Russia since the break-up of the Soviet Union. Part of this material is not intercepted before leaving the Russian borders. The quantities that have already been stolen (and fortunately intercepted) are sufficient to make small nuclear weapons. It has been noted¹⁶ that sufficient fissile material can be diverted from Russian stockpiles, with a high probability of success, to provide a sub-national group with one or two nuclear weapons, or even a rogue state with a sizeable arsenal.

Infiltration by organised crime groups, both traditional and relatively new ones, into the legitimate economy stems mainly from the need to invest their illicit proceeds in order to obtain a legitimate income, but also to reduce the overall risk of being detected and having their capital seized and confiscated. Recent stringent anti-money laundering policies adopted by the member states have stimulated, via the money trail, a more efficient detection of the real owners of these proceeds, and the seizure of capital of illicit origin. It is therefore likely that organised criminals are seeking to internationalise themselves in order to reduce the risk that their criminal proceeds will be seized and confiscated.

Infiltration of the licit economy stems also from the need criminals have always had for respectability. The history of criminal organisations shows that infiltration in legitimate businesses belongs in the evolutionary ladder of many criminal organisations. American experience has shown that this has happened in the past, while the situation of the ex-Soviet Union already displays this evolution. In the latter country, today's criminal class, going through the process of contemporary infiltration into legitimate businesses and gaining respectability, will probably be joining the ruling classes of tomorrow.

It is possible to distinguish three different effects and four areas of the legitimate economy in which organised criminals operate: the product market, the labour market, capital and, as a consequence, the stock market.¹⁷

In the product market, the criminal enterprise can seriously distort competition among legal enterprises. It strives to dishonestly acquire a leading position in the market or to engage in a coalition with legitimate enterprises, and it is clear that, in this phase, it also tries to take over the role of the State. This means that criminal organisations or legitimate enterprises, in a context of different and varying relations, seek to acquire a leading position over the market, using weapons of violence and breaking the rules of competition. The more the State or its institutions or markets are weak or weakly controlled and defended, the more easily attainable this objective becomes. In the European Union today, criminal organisations operate where profits are to be made, but also where the State or its institutions are weaker. Moreover, criminal penetration within the ex-Soviet republics is due also to these two fundamental requisites: the maximisation

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of profits and the weakness of legislation and control instruments. It is therefore clear that the major distortions in competition produced by illicit methods stunts the entrepreneurial initiative of those actors operating in accordance with the law, and that it produces a major lack of equilibrium in the market.

Another important factor is distortion in the labour market. Two basic distortions arise in the labour market due to criminal infiltration. The first is that the criminal enterprise offers job opportunities at higher prices and with lower costs than those fixed in the legal market. Control is exerted over the work-force by the use or the threat of violence. By recruiting labour (especially foreign illicit aliens), criminal organisations directly handle job placements, negotiations, wages, thus protecting themselves against strikes or other forms of claimant behaviour.

Also of major importance for criminal organisations is the capital market. Almost all of the European Union authorities are aware of illicit capital entering capital markets. In investing their surplus money, criminal organisations increasingly tend to use professionals and lawyers who make it possible to conceal the real ownership of money thus averting the risk of its detection and seizure. It is evident that financial markets are certainly the most desirable sectors for criminal infiltration today.

But there is a further aspect of penetration which is of particular importance: the effect of stock markets. Today, an interesting phenomenon within the European Union is that criminal organisations tend to invest the laundered money by acquiring the property of enterprises. Through the acquisition of a limited corporation, the criminal investor can gain personal legitimisation, as well

as a profitable, unsuspected way to commingle licit and illicit funds without directly using financial institutions. Depending on the surrounding economy or criminal culture, such penetration may be perpetrated through violence, extortion, usury or other more sophisticated financial methods. This kind of infiltration is particularly important because it clearly illustrates the type of distortion produced. It is also true that today, through the enterprise and its re-capitalisation with criminal proceeds, a distortion of competition mechanisms may be engendered. Legal enterprises in fact borrow capital by paying an official interest rate, not paid by those enterprises that have the opportunity of resorting to criminal proceeds to satisfy their need for liquidity and capital. Of course these enterprises can operate in the market with more competitive prices.

B. Changing Structures and Relations of Criminal Organisations

The increased activities generated by the new opportunities offered through the globalisation of the markets seem to induce criminal organisations to develop in two different directions: specialisation and diversification.

The trend towards specialisation in one or more markets or specific illicit goods is provoked by a combination of increased competition among criminal organisations and powerful investigations by law enforcement agencies. Both are forcing criminal organisations to develop their expertise and to become increasingly efficient in their activities. Galicians in Spain and the mafia in Italy have specialised as cocaine importers and main suppliers for Europe. Local criminal groups in the Netherlands and Belgium have specialised in the production and export of

synthetic drugs in and outside the European Union, whereas local groups of white collar criminals still based in these countries have developed a long-standing expertise in financial, European Union and VAT frauds. On the other hand, specialisation depends also on the traditional expertise and on the specific geographical position of the country of origin to the criminal groups. It happens that the Turkish and Kurdish drug traffickers for example, are devoted almost exclusively to heroin trafficking, because of the vicinity of Turkey to the source area, and because of the wide immigrant communities in the heart of the European Union.

With regard to the process of diversification as opposed to specialisation, some groups are developing a wide set of opportunities providing goods and services on an opportunistic basis. They are sold to other criminal organisations even though they may be competitors in a specific market or territory (arms trafficking and human smuggling, for example). Nigerians and eastern European criminal networks (headed by the Russian mafia) have developed their activity of delivery services for a wide range of products and customers. The former have started importing cocaine from the Colombian cartels, extending further to heroin from South-East Asia. The latter, due to the geographic position and the extension of the territory available, have diversified the products from drugs (both heroin and cocaine) to arms, alien and prostitute smuggling, and are in return exporting cars and synthetic drugs from Europe.

In terms of changes in organisational structure, there are two main changes that can be outlined; greater flexibility and more co-operation with other criminal groups.

1. More Flexibility

More flexibility occurs in the composition of the criminal groups and their operations. A market with a varying demand for illegal products or services, such as the European one, acts as a magnet for present and new adventurers. Criminal organisations require a flexible structure in order to promptly re-organise their activities according to demand and to the number of competitors. Occasional businesses or specific targets more often require small task forces of criminal specialised experts, who work with external individuals, providing services and expertise in fields unknown or not directly accessible to the criminal organisation. This networking can be observed in the drug market, where the example of the Nigerian networks is a classical one. Small groups of executives or even individuals carry out the operational tasks or missions, co-ordinated and instructed by a strategic centre in the country of origin. In the field of fraud committed by Belgian or Dutch white collar criminals, and for car thefts carried out by Polish and Yugoslav networks, these networks have acquired a specific expertise in the division of labour for every task.

Flexibility also occurs in a wider gap between the ranks of the organisational structure. This means that the hierarchical distance between the leaders of a crime-enterprise and the rank-and-file is becoming increasingly greater. This also means that the "trail of evidence" linking the crime and the top level has become obscured, providing insulation against law enforcement. At the lower levels, work is carried out by small units (namely "cells") which are aware of only a part of the organisation's activities or which function only as servicing units. This phenomenon has been observed in the drug markets, where "veterans" are able to recruit a wide network of trusted executives.

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The organised crime groups analysed above require a wide range of services, information and skills. Therefore, the problem of co-operation comes either through the collusion/conflict with other criminal groups or through corruption/conflict with law enforcement and judiciary personnel.

2. More Co-operation among Criminal Organisation¹⁸

At the political and law enforcement levels, attention is being paid to the problem of collusive agreements among criminal groups. Recent alarm about such agreements denotes the awareness that the level of competition among criminal groups in some markets, and its development in some cases towards monopolistic positions or collusive agreement, is relevant for understanding the way in which organised crime faces opportunities and risks. Since collusive agreements are made with the purpose of optimising opportunities and risk (in this case, trading lesser opportunities against less risk), in regard to a monopoly where these two variables are high (higher prices are an easy target for the police), it is understandable that law enforcement agencies are concerned when a trend towards more collusive agreements develops. For the same reason there is the opposite concern on behalf of organised criminals. It is possible to hypothesise that these collusive agreements are favoured in a combination of:

- Systemic variables: such as a lengthy inter-criminal conflict with inevitable spreading of violence;
- Organisational variables: such as weakness of the organisations due to infiltration, turncoats, conviction of the top leaders;
- Economic variables: such as

changes in the markets, reduction of resources, demand for specialisation;

- Perception of an increase of law enforcement risk.

There is a continuum from complete merger between organisations at the one extreme, to independent spot market transactions on a one-off basis, at the other. These alliances can take many forms, including operating linkages, licensing or franchise agreements and joint ventures. In this case, tactical arrangements, rather than strategic alliances are developed, because of the lack of long-term expectations. In many respects such activities seem to be typical of a significant part of the drug-trafficking industry, that is, they are carried out by small, independent organisations that have come together to exploit a particular trafficking route and a specific way of circumventing customs and law enforcement. Many of these are small-scale tactical alliances based on transnational networks, but when they prove effective they have an inherent capacity for growth. At the same time, their loose, fluid nature makes it equally plausible that they will be disbanded and their constituent elements reformed in different constellations. Tactical alliances are made for specific purposes and are often followed by a search for other partners to make shipments to different locations using different modes of concealment.

In the first place, alliances are a rational-response, multiplication of the business opportunities (legitimate and criminal) provided by the opening of the European markets. The development of alliances can be understood as a response by criminal enterprises to the business environment and as an attempt to overcome their own limitations. One of the most important ways to accomplish this is by aggressively

gaining access to new markets. Sometimes, at the lower level (mainly involving street drug smuggling or prostitution rackets), this access happens with the use of violence in order to establish supremacy among exploiters of the same market, as in Germany among east European groups or in the United Kingdom among street gangs.

The other way is to co-operate with those enterprises which are already entrenched in these markets, having greater knowledge of local conditions and being more attuned to local problems, rather than trying to insert themselves as competitors on unfamiliar territory. In this case, alliances can also provide an effective means of circumventing restrictions imposed by government or anti-governmental organisations, which can make it difficult for foreign organisations to penetrate the market. In this context, links are also increasing between criminal and terrorist organisations. Indeed, the distinction between terrorist groups pursuing essentially political objectives and criminal organisations pursuing economic goals is likely to become increasingly blurred as can be noted in terrorist groups such as the IRA and the INLA in Ireland and the Kurds in Germany and Turkey. They all act to achieve economic support that could be instrumental in the case of terrorists, or the end result in the case of organised crime.

Paradoxically, co-operative tactics offer a rational and effective response to a highly competitive situation. Obviously the organisations already in the market have to be offered something substantial in return, or some other form of reciprocity has to be exercised.

Co-operation among criminal organisations is often aimed at circumventing law enforcement and national regulations. From this

perspective, it is clear that at least some of the alliances among them can be understood as risk-reduction alliances. Criminal organisations make alliances with governments, either through corruption or coercion or, more often, a mix of both. A reoccurring feature of this behaviour is the extended use of bribery in Italy in order to enhance control on territory, to minimise the risk of law enforcement and to strengthen their position against external competitors. Another example is offered by the criminal networks carrying out European Union or VAT frauds which must necessarily develop ties with institutions both at a national and European level. Even criminal groups dealing with the transportation of illicit goods through the European Union borders must have accomplices at some level in the Customs sector.

IV. THE EUROPEAN POLICIES ¹⁹

The European Union context gives criminals a fertile ground for their transnational activities. The Treaties establishing the European Community and following *Treaty of Maastricht* grant a total freedom in moving capital, goods, services and persons across the borders of the Member States. It is, therefore, understandable how organised criminal rings are taking advantage of this situation, specialising themselves in transnational illegal behaviours, exploiting this large possibility of movement within the Union in connection with the loopholes of national legislation. Consequently criminals tend to become transnational and organised, building up illicit enterprises, moving criminal goods and criminal proceeds from one country to another, establishing their bases in the most secure nations and entering those illegal sectors where they perceive high opportunities for gain, with low risk.

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Drug trafficking, money laundering, fraud (especially against the European Union's interests), corruption, trafficking of aliens with the scope of their exploitation are all illicit behaviours that are an ever increasing threat not only to the single states of the Union, but also to all the European Community. Money laundering in particular is advantaged by all the new technologies present in modern society. This is the way in which the European Union institutions try to define the phenomenon:

“Organised crime is increasingly becoming a threat to society as we know it and want to preserve it. Criminal behaviour is no longer the domain of individuals alone, but also of organisations that pervade the various structures of civil society, and indeed society as a whole. Crime is increasingly being organised across national borders, also taking advantage of the free movement of goods, capital, services and persons. Technological innovations such as Internet and electronic banking turn out to be extremely convenient vehicles either for committing crimes or for transferring the resulting profits into seemingly licit activities. Fraud and corruption take on massive proportions, defrauding citizens and civic institutions alike”.²⁰

How can European Union organisms react to this complex situation? Since the existence of the European Union, with its rules and aims, is itself a push factor to the spreading of organised crime, how do the European institutions envisage to endow themselves with specific means for combating organised crime? Unfortunately, despite the general supra-national power given to European institutions within the economic framework of the Union, as far as crime, legal co-operation in criminal matters and immigration are concerned,

the situations differ widely.

Only since November 1993, does the Title VI of the *Maastricht Treaty*, through the so-called ‘third Pillar’ of the Union, make specific provisions in the field of justice and home affairs, which includes immigration, drug addiction and co-operation in civil, penal, custom and police fields, giving life to a special decision process. In these fields, Member States do not fully give up their sovereignty to the European Union, because decisions continue to be taken unanimously. The previous informal co-operation has now been transformed into an institutionalised method. That is to say that this particular decision-making standard is a half-way between the traditional Community system involving all the European institutions and intergovernmental co-operation at the diplomatic level.²¹ While the European Parliament and the Commission have a very reduced role, the European Council, always unanimously, can adopt joint actions and decisions (which bind the Member States to the extent in which they contain explicit obligation) and predispose Conventions. It is mainly in this legal framework that, at European Union level, the fight against organised crime can be contained.

It is difficult to draw a detailed picture of the most recent actions developed against organised crime in the European Union's context. Anyway, the criterion adopted here is based on the different illegal activities contrasted, on the importance of the instruments settled and on the methods of fighting crime.

As drug trafficking and addiction are problems that afflict all of the Member States, some efforts have been undertaken to enhance international co-operation and data exchanges. The action by the European Union in this sector is based on

the 1994 Communications from the Commission to the Council and on the conclusions of the Cannes and Dublin European Councils (held in June 1995 and December 1996 respectively). The aim of these instruments is to combat drug trafficking, to reduce drug demand and to develop co-operation among countries.

During the European Council held in Dublin 13 and 14 December 1996, the need was underlined for harmonising laws, developing further co-operation among law enforcement agencies, paying attention to synthetic drugs and fully implementing the European Union's Directive on money laundering, considering its application outside the classical financial sector.²² Also the role played by information, education and training on health matters in reducing drug demand was highlighted. In the field of co-operation among nations, the European Council also gave prominence to the implementation of international agreements, such as the *Vienna Convention against Illicit Trafficking in Narcotics Drugs and Psychotropic Substances*, and to a better information exchange among partners about drugs (especially with countries of Latin American, Caribbean, central Asia, central and eastern Europe).

Following this advice, a joint action²³ was issued on the approximation of the laws and practices of police, customs services and judicial authorities to combat drug addiction and to prevent and combat illegal drug trafficking. This joint action, further to harmonising legal, police and customs systems within the nation so as to improve prevention and fight against illegal drug trafficking, urges Member States to: combat illicit movements of narcotic drugs and psychotropic substances within the Community (including "drug tourism"); punish serious drug trafficking offences

with the most serious penalties available in their penal systems for crimes of the same gravity; endeavour to change their legislation or to fill the legal vacuums in regard to synthetic drugs; take appropriate steps to combat illicit cultivation of plants containing ingredients with narcotic properties; make it an offence to publicly and intentionally incite or induce others, by any means, to commit offences of illicit use or production of drugs. On 16 December 1996, the Council issued a resolution aimed at dismantling the illicit cultivation and production of drugs within the European Union. On 20 December 1996, the Council adopted a resolution on sentencing for serious drug offences, asking Member States to ensure the possibility of custodial sentences for serious illicit trafficking in drugs. On the same date, the Council adopted another joint action on the participation of the Member States in a strategic operation planned by the Customs Co-operation Council to combat drug smuggling on the Balkan Route. Recently, on 16 June 1997, the European Council enacted a joint action related to information exchange, risk assessment and the control of new synthetic drugs.

As far as police co-operation related to drugs is concerned, a special unit, the European Drug Unit (EDU), was created by ministerial agreement in June 1993. The initial task of this Unit was to solicit exchanges of information on narcotics and money laundering. When talking about Europol and police co-operation later on, EDU will be discussed in more detail.

Concerning fraud against the European Union's financial interests, in 1994 UCLAF (*Unité Contre la Lutte Anti Frode*) was established by the European Commission. This is a special Unit in charge of the prevention and repression of fraud affecting the budget of the Union. This type of fraud, which is seriously damaging not

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only the right functioning of the Community, but also the interests of all Member States, is more and more in the hands of organised criminal networks. UCLAF has both legislative and operational functions, being responsible not only for studying all kinds of measures for protecting the European Union's budget, but also, more generally, for developing a contrast strategy against economic and financial crime prejudicial to the Community and operational countermeasures against counterfeiting. Another task of UCLAF is that of information, publishing a yearly report on the outcome of its activity.²⁴

The most noteworthy actions by the European Union in the fraud sector have been:

- Community regulations aimed at co-ordinating the administrative co-operation between Member States and the European Commission in the customs and agricultural fields;
- Directive issued on 18 December 1995, on the protection of the European Community's financial interests, that, amongst other things, defines the acts damaging the Union's budget;
- *Convention on the Protection of the European Communities' Financial Interests* (adopted by the Council on 26 July 1995), that fixed a common definition of fraud and binds the Member States to punishing this behaviour (and its instigation or attempt) as a criminal offence in their national penal systems.

Keeping in mind that corruption is a very common criminal activity practised in organised criminal networks when doing business, and in particular, considering the negative and prejudicial role played by

corruptive practices both at the Community and national level, the European Council, on 26 May 1997, drew up the *Convention on the Fight Against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union*. The aim of this Convention is to strengthen judicial co-operation in the fight against corruption. The Convention gives legal definition of active and passive corruption, obliging Member States to punish these behaviours as criminal offences if committed either by national or by European Union officers. Those committing these offences, or instigating the conduct in question, should be punished by effective, proportionate and dissuasive criminal penalties, including, in the most serious cases, deprivation of liberty, which can give rise to extradition processes. Other rules foresee the jurisdiction of the Member States and the total co-operation of Member States in investigating, prosecuting and carrying out the punishment of such offences, when they involve more than one country.

A more and more alarming criminal question within the European Union is the trafficking of migrants. This phenomenon is controlled mainly by powerful criminal organisations, capable of establishing contacts among nations, of corrupting officials, of counterfeiting documents and of controlling black labour markets. In this human trade, particularly weak subjects are women and children, as they can easily be sexually exploited in host countries. The European Union institutions have recently become more aware of this criminal issue.

A Communication, including immediately effective steps to combat child pornography on the Internet, and a Green Paper on the *Protection of Minor and Human Dignity* were adopted by the European Commission on 16 October 1996.

A Communication by Commissioner Anita Gradin on *Trafficking in Women for the Purpose of Sexual Exploitation* whose aim was:

“to stimulate a broad policy debate and to promote a coherent European approach to this issue....such an approach should include measures to improve both international and European co-operation, whilst putting more effective measures in place at the national level”.²⁵

The European Council, on its behalf, has adopted:

- a joint action extending the mandate given to Europol Drug Unit's to include trafficking in human beings²⁶;
- a joint action to establish a programme for sharing information among Member States on trade in human beings and the sexual exploitation of children (the so-called STOP programme).²⁷ The STOP programme should develop co-ordinated initiatives on the combating of trade in human beings and the sexual exploitation of children, on the disappearances of minors and on the use of telecommunications facilities for the purposes of trade in human beings and the sexual exploitation of children. The specific aim of the programme should be providing training, exchanging programmes, holding meetings and seminars, doing studies and research, disseminating information for judges, public prosecutors, law enforcement agencies, civil servants or the public services that come to contact with this particular phenomenon;
- a joint action introducing a

programme of training, exchanges and co-operation in the field of identity document²⁸ (the so-called SHERLOCK programme), run by the European Commission, with a view of making more effective the action against the false papers used, especially by clandestine immigration networks.

Another method for fighting organised crime within the European Union is to strengthen legal co-operation in the criminal area among all Member States. For example, to facilitate and simplify extradition procedures for criminals who have committed particular offences, could be a good way for speeding up processes against persons involved in organised criminal rings operating in the transnational arena. *The Convention on Simplified Extradition Procedures between the Member States of the European Union*, adopted by the European Council on 10 March 1995, is aimed at abolishing a number of bureaucratic formalities when the person in question agrees to be extradited. *The Convention relating to Extradition between the Member States of the European Union*, adopted by the European Council of Dublin on 27 September 1996, is aimed at increasing the possibilities of extradition. The requested State cannot refuse the demand for extradition if the fact is punishable under the law of the requested State with at least 12 months of liberty deprivation, and by the law of the requested Member State with a penalty of at least 6 months of deprivation of liberty. In the cases in which the offences are classified in the requesting State as conspiracy or association to commit an offence, the requested State cannot refuse the extradition, claiming that its penal law does not provide for the same facts to be an offence, if the conspiracy or the association is finalised to commit crimes related to terrorism and drug

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trafficking or other forms of serious illicit behaviours against individual freedoms or creating a collective danger. It is, in any case, necessary that these acts should be punishable by the requesting Member with a penalty of at least 12 months of deprivation of liberty. Extradition may not be refused on the grounds that the person requested is a national of the requested Member State. These two Conventions are currently being subjected to the process of ratification by Member States.

Furthermore, in the European Union framework, a new important *Convention on Mutual Assistance in Criminal Matters* is currently being drafted. It tends to reduce difficulties deriving from cross-border searches of evidence and to make procedures simpler and speedier, by making it easier to obtain evidence coming from other countries, bettering and intensifying cross-border investigations and allowing contact and information exchange among investigators and judges of different Member States.

Considering how criminal groups prosper, thanks also to the discrepancies among legal systems of the European Union's States, it is not difficult to realise why, in the field of legal co-operation, the instrument used to contrast the activities of organised crime is the harmonising of penal legislation of the Member States. A fruitful example of this attempt is the *Council Resolution on Individuals who Co-operate with the Judicial Process in the Fight against International Organised Crime*, adopted on 20 December 1996. In this case the Council calls all Member States, to take appropriate measures to encourage persons who participate, or have participated, in an association of criminals or other criminal organisation of any kind, or in organised crime offences, to co-operate with the judicial process. To co-operate means to reveal essential information to

the investigation authorities or to collaborate in helping authorities to deprive criminal groups of their illegal resources or of the proceeds of crime. Information may cover the composition, the structure or the activities of the criminal network; the existing links with other illegal groups or the offences committed or that might be committed by the criminal ring. Following the advice of the Council, Member States should introduce in their legislation rules granting benefits to these individuals who, breaking away from the criminal organisations they belonged to, help authorities in collecting evidence essential for reconstructing facts, identifying perpetrators of crimes and leading to their arrest. Stringent protective measures should be granted to these collaborators and to their parents, children or other people who, as a consequence of the revelations, are likely to be exposed to serious and immediate danger. In the end, the Council underlines the need for facilitating judicial assistance among States for processes involving individuals co-operation in the fight against international organised crime. Also keeping clearly in mind that the instrument of the resolution is not binding for Member States, the relevance of the Council's act must be stressed, for it represents a moral imperative and a well-defined way to address criminal organised networks operating in Europe.

The elaboration of an efficient strategy against international criminal syndicates should result in combating them on an international scale, and it should allow for the circulation of police information and knowledge among the law enforcement agencies of the Member States, at least as fast as organised crime gangs cross national borders. The European Union institutions have always felt the need for police co-operation in the fight against organised crime, and have acted

accordingly by establishing Europol and EDU.

In June 1991 in Luxembourg, Heads of Government or States of all Member States stressed, upon an initiative of the German Chancellor Kohl, the urgency for creating a force called Europol. While pending the drafting of the Convention establishing Europol, in June 1993 an embryonic form of Europol, the European Drug Unit (EDU), was set up through a ministerial agreement. The initial task of EDU was the exchange of information among law enforcement agencies on narcotics and money laundering. With a joint action adopted by the European Council on 10 March 1995²⁹, the role of EDU was better defined and this Unit was put in charge of the exchange of information and intelligence in relation to illegal organised criminal activities affecting two or more States, and of helping police and relevant national agencies combat them. The criminal activities to be covered by EDU were illegal drug trafficking, illicit trafficking in radioactive and nuclear substances, crimes involving clandestine immigration networks and illicit vehicle trafficking. With another joint action on 16 December 1996³⁰, the Council extended the mandate of EDU also to the trafficking of human beings.

The creation of EDU was principally caused by the bureaucratic slowness linked to the birth of Europol. *The Convention on the Establishing of a European Police Office (Europol Convention)* was, in fact, drawn up by the European Council on 26 July 1995, but until now it has not yet been ratified by all Member States. On the basis of this Convention, and with the aim of improving the effectiveness of the competent authorities in the Member States and co-operation among them in preventing and combating terrorism, unlawful drug trafficking and all other

forms of serious transnational crime, Europol has been endowed with different tasks: to facilitate the exchange of information among Member States; to obtain, collocate and analyse information; to notify the competent authorities of Member States (without delay) of any information and connections detected among criminal offences; to aid investigation within the Member States; to maintain a computerised system for collecting information. In each Member State a national Unit should be established or designed and should serve as a liaison body between Europol and national authorities.

At the Dublin European Council of 13 and 14 December 1996, conscious of the need for serious and co-ordinated approach by the Union to organised crime problems, the Council expressed the hope of a rapid ratification of the *Europol Convention* by Member States. In this Council further decisions have been taken, the most important of which was the establishing of a High Level Group to draw up an action plan with specific recommendations covering all the aspects of organised crime.

This action plan, drafted by the High Level Group, was adopted by the Council on 28 April 1997 and can be considered the most serious planning of the activities of the Union against organised crime. The final part of this paper will deal more at length with this action plan because of its relevance, its recent adoption, its broad and detailed range of proposals and its long-term programme, that involves all European institutions and Member States in an active future collaboration. The guidelines, expressed in recommendations, that the European Union and Member States should follow in enhancing their struggle against organised crime are very clear.

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In the field of police co-operation, each Member State should grant a high level of co-ordination among all its law enforcement agencies, providing a single central contact law enforcement agency to exchange information and keep contact with the authorities of other Member States (Recommendations no. 1-2). The action plan also asks for the rapid ratification and implementation of the Europol Convention, stressing that the powers of Europol should be broadened to include the following:

“(a) Europol should be enabled to facilitate and support the preparation, co-ordination and carrying out of specific investigative actions by the competent authorities of the Member States...; (b) Europol should be allowed to ask Member States to conduct investigations in specific cases...; (c) Europol should develop specific expertise which may be put at the disposal of Member States to assist them in investigating cases of organised cross-border crime...; (d) Full use should be made of possibilities of Europol in fields of operational techniques and support, analysis and data analyses files (for instance registers on stolen cars or other property)...; (e) Access by Europol may be sought to the Schengen Information System or its European successor” (Recommendation no.25).

The possibility for Europol to collaborate with third party countries and international organisations should also be taken into account (recommendation n.24).

The Commission, Council and Member States should develop a comprehensive policy against corruption, trying to better the transparency of public administration. This object should be achieved by focusing primarily on prevention elements and:

“Addressing such issues as the

impact of defective legislation, public-private relationships, transparency of financial management, rules on participation in public procurement, and criteria for appointments to positions of public responsibility...”, but also not forgetting “the area of sanctions, be they of a penal, administrative of civil character, as well as the impact of the Union’s policy on relations with third States” (Recommendation no.6).

Commission, Council and Member States, together with the professional organisations concerned, should always study and define methods for reducing the susceptibility of liberal and other professions to organised crime, for example through the adoption of codes of conduct (Recommendation no.12):

“The Member States and the European Commission should ensure that the applicable legislation provides for the possibility for an applicant in a public tender procedure, who has committed offences connected with organised crime, to be excluded from participation in tender procedures conducted by Member States and by the Community. In this context it should be studied whether and under what conditions persons who are currently under investigation or prosecution for involvement in organised crime could also be excluded. Specific attention should be paid to the illicit origin of funds as a possible reason for exclusion” (Recommendation no.7).

As far as fraud against the financial interests of the European Union is concerned, Recommendation no. 10 of the action plan states that;

“The Member States should consult regularly the competent services of

the Commission with a view to analysing cases of fraud affecting the financial interests of the Community, and deepening the knowledge and understanding of the complexities of these phenomena within existing mechanisms and frameworks. If necessary, additional mechanisms shall be put in place with a view to arranging such consultations on a regular basis. In this context, future relations between Europol and the Commission's anti-fraud unit (Uclaf) should be taken into account."

The action plan also considers the necessity for countries to harmonise national legal systems by adopting the same offences all over the European Union territory. So, on the basis of Recommendation no. 17:

"The Council is requested rapidly to adopt a joint action aiming at making it an offence under the laws of each Member State for a person, present in its territory, to participate in a criminal organisation, irrespective of the location in the Union where the organisation is concentrated or is carrying out its criminal activity."

On the basis of Recommendation no. 9, the structural funds of the Union should be employed to avoid large cities of the Union becoming grounds for organised criminal groups:

"Particular attention should be given to groups not fully integrated in society, since these may be vulnerable targets for criminal organisations."

In the field of money laundering and confiscation of the proceeds of crime, the action plan (Recommendation no.26) suggests to the Council, to the Commission and to Europol to endeavour to:

- improve international exchange of data;

- make as general as possible the criminalisation of the laundering of the proceeds of crime, considering the opportunity of extending this offence to negligent behaviours;
- introduce in the legal systems of the Member States confiscation rules that allow confiscation regardless of the presence of the offender (including dead or absconded);
- extend the obligation imposed by Article 6 of the *European Directive on Money Laundering* to all offences linked with serious crimes and to persons and professions different from financial institutions;
- address the issue of money laundering committed via Internet and other electronic means of payment (it has to be remembered that Recommendation no.5 calls for a crosspillar study in the field of high-technology crime);
- try to reduce the use of cash payments and cash exchanges by natural and legal persons serving to cover up the conversion of the proceeds of crime into other properties;
- Consider common strategies to be undertaken in the fields of economic and commercial counterfeiting and in the falsification of banknotes and coins, also in view of the introduction of single currency.

The action plan (Recommendations no.'s 13-14) also calls for the rapid ratification of the most relevant international Conventions concerning criminal matters, such as the *European Convention on Extradition* (Paris 1957), the *Protocol to the European Convention on Mutual*

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Assistance in Criminal Matters (Strasbourg 1978); the *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime* (Strasbourg 1990), the *Agreement on Illicit Traffic by Sea*, implementing Article 17 of the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (Strasbourg 1995), the *Convention on the Fight against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (Vienna 1988). It also warmly invites Member States to ratify all the relevant European Union Conventions: the *Convention on Simplified Extradition Procedure between the Member States of the European Union*; the *Europol Convention*, the *Convention on the Protection of the European Communities' Financial Interests*, the *Convention on the Use of Information Technology for Customs Purposes*; the *Convention relating to Extradition between the Member States of the European Union*; the *Protocols to the Convention on the Protection of the European Communities' Financial Interests*.

In conclusion, the *Amsterdam Treaty* should also be mentioned which, modifying yet again the essential structure of the Union, could also be considered a first attempt to follow some of the recommendations of the action plan. Although signed on 21 September 1997, this Treaty has not yet come into force, for it is waiting for ratification by all Member States. In many of its points the Amsterdam Treaty focuses on criminal problems, requiring different levels of co-operation among law enforcement and judicial authorities of Member States, and between them and Europol, and calling for the creation of a European research, documentation and statistical network on cross-border crime within five years. On the basis of the Articles of the Amsterdam Treaty, Europol can ask Member States to

conduct joint investigations in specific cases; Member States are invited to set up joint crime-fighting teams, that can be supported by Europol; easier extradition of criminals among Member States should be made possible, and all over the Union a common minimum standard for rules and penalties in the field of organised crime should be adopted.

NOTES

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 20. Action Plan to combat organised crime, adopted by the European Council on 28 April 1997, Part I, Chapter 1, paragraph 1.
 21. U. Draetta, *Elementi di diritto comunitario*, Giuffrè editore, Milano, 1994, pp. 44-45.
 22. This Directive (no. 91/308, 10 June 1991) is aimed at preventing traffickers from laundering their money into European legal financial circuits, asking Member States to criminalise this behaviour and financial institutions to be more strict in controlling the identity of their clients.
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 28. Joint action 96/673/JAI, adopted on 28 October 1996.
 29. Joint action 95/73/JHA, adopted on 10 March 1995.
 30. Joint action 96/748/JHA, adopted on 16 December 1996.