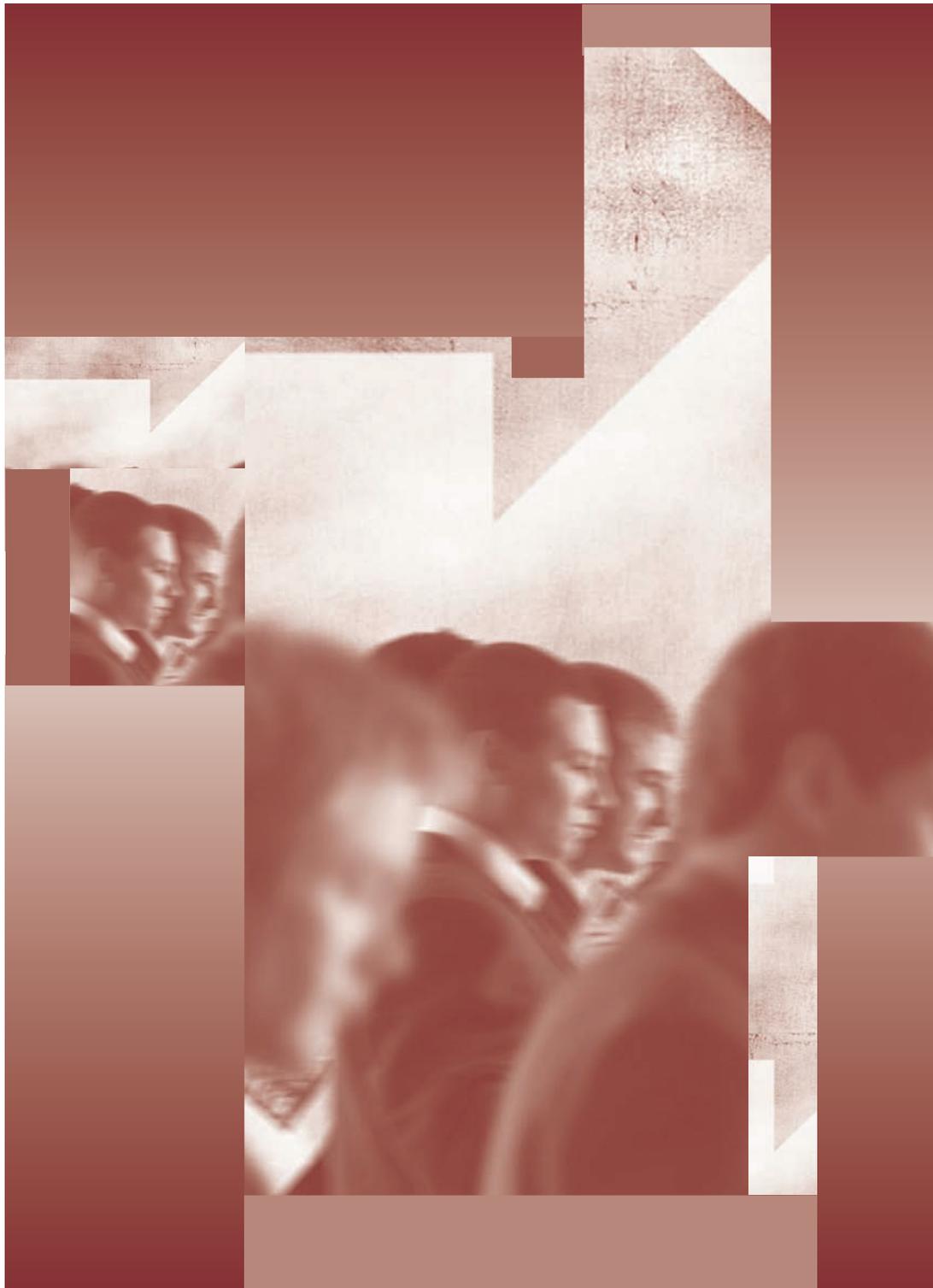


The Contribution of Data Exchange Systems to the Fight against Organised Crime in the SEE Countries



Supported by:
Provincia Autonoma di Trento
Regione Piemonte
Provincia di Torino
*South East European
Cooperative Initiative*

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 **TRANSCRIME**

A PROJECT EXECUTED FOR:
**OFFICE OF THE SPECIAL COORDINATOR OF THE
STABILITY PACT FOR SOUTH EASTERN EUROPE**

IN COLLABORATION WITH:
**SECI REGIONAL CENTER FOR COMBATING
TRANS-BORDER CRIME**



UNIVERSITÀ DEGLI STUDI
DI TRENTO



UNIVERSITÀ CATTOLICA
DEL SACRO CUORE

THE CONTRIBUTION OF DATA EXCHANGE SYSTEMS TO THE
FIGHT AGAINST ORGANISED CRIME IN THE SEE COUNTRIES

FINAL REPORT

EXECUTED BY

TRANSCRIME

FOR

THE OFFICE OF THE SPECIAL COORDINATOR OF THE STABILITY PACT FOR
SOUTH EASTERN EUROPE

SUPPORTED BY

AUTONOMOUS PROVINCE OF TRENTO

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TABLE OF CONTENTS

1. ACKNOWLEDGEMENTS	1
2. EXECUTIVE SUMMARY	5
3. INTRODUCTION	15
4. RATIONALE	17
5. AIM AND OBJECTIVES OF THE RESEARCH	19
6. OPERATIONAL DEFINITIONS	21
7. METHODOLOGY	25
8. COUNTRY PROFILES	37
8.1. Albania	39
8.2. Bosnia and Herzegovina	71
8.3. Bulgaria	101
8.4. Croatia	131
8.5. Hungary	157
8.6. Moldova	179
8.7. Poland	205
8.8. Romania	229
8.9. Serbia and Montenegro	257
8.10. Slovakia	285
8.11. Slovenia	307
8.12. The Czech Republic	331
8.13. The Former Yugoslav Republic of Macedonia (FYRoM)	357
8.14. Turkey	385

9. COMPARATIVE ANALYSIS	411
10. CONCLUSIONS AND RECOMMENDATIONS	463
BIBLIOGRAPHY	471
Annex 1. Methodological appendix	493
Annex 2. Questionnaires	505
Annex 3. Contact details of national authorities dealing with international cooperation	581

1.

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2.

EXECUTIVE SUMMARY

This report outlines the results of the research activities carried out for the study '*The Contribution of Data Exchange Systems to the Fight against Organised Crime in the SEE Countries*'.¹ This study has been carried out by TRANSCRIME, Joint Research Centre on Transnational Crime, Università degli Studi di Trento – Università Cattolica del Sacro Cuore, for the Office of the Special Coordinator of the Stability Pact for South Eastern Europe. It is funded by the Autonomous Province of Trento (Italy), the Piedmont Region (Italy), the Province of Turin (Italy) and the South East European Cooperative Initiative. SECI – Regional Center for Combating Trans-Border Crime contributed to the project by providing useful contact persons and information during the development of the research.

This study has been developed within the context of the Stability Pact Initiative against Organised Crime in South-Eastern Europe (SPOC) and shares with it the overall goal of strengthening the capacity of SEE countries to fight organised crime in accordance with European and international standards. The rationale of the study is that an effective system for exchanging information is essential to cope with the old and new transnational criminal activities, such as trafficking in human beings, drugs, arms and stolen vehicles as well as money laundering, all of which normally involve several jurisdictions.

Over the last 15 years, Eastern European countries have undergone dramatic changes from both a political and economic point of view. The recent EU enlargement is expected to bring about major economic opportunities, which will be used by legitimate actors, but could also be exploited by criminal ones. However, this development has not been accompanied by a parallel reinforcement of the SEE criminal justice systems. As a result of the weaknesses and discrepancies in the national criminal legislation and law enforcement apparatus, organised criminal activities may flourish and increase the transnational dimension that it has already achieved.

Against this background, and with specific regard to 14 SEE countries, the research project '*The Contribution of Data Exchange Systems to the Fight against Organised Crime in the SEE Countries*' was developed in order to enhance and strengthen the process of exchanging information, by encouraging the adoption of legal instruments, bilateral and multilateral agreements and by enhancing reciprocal knowledge of practices and the capacity for cooperation.

¹ In the context of this research the term 'SEE countries' or 'the Region' includes the following countries: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, Moldova, Poland, Romania, Serbia and Montenegro, Slovenia, Slovakia, the Czech Republic, the Former Yugoslav Republic of Macedonia (FYRoM) and Turkey. In the report we refer to these countries with the term 'SEE countries' or 'the Region'.

In order to achieve this goal, the research has been divided into three objectives:

1. *To analyse the present organised crime situation in the SEE countries, with reference to the main features and the activities of the organised criminal groups.*
2. *To analyse how international police and judicial cooperation against organised crime functions and does not function in the SEE countries.*

Given the complexity of this objective, it was further divided into three sub-objectives:

- 2.1 analysis of the *legislation* on international police and judicial cooperation against organized crime in the SEE countries, in order to assess the discrepancy between these laws and international and European standards;
 - 2.2 analysis of the *practices* related to international police and judicial cooperation against organized crime in the SEE countries, in order to assess the level of enforcement of the related legislative provisions;
 - 2.3 analysis of the *good practices* of international police and judicial cooperation against organized crime in the SEE countries, in order to assess the discrepancy between these good practices and international and European standards.
3. *To develop recommendations in order to strengthen international police and judicial cooperation against organised crime in cross border criminal investigations involving the SEE countries.*

The following methodological steps were undertaken to achieve the above objectives.

WITH REGARD TO OBJECTIVE 1. ('TO ANALYSE THE PRESENT ORGANISED CRIME SITUATION IN THE SEE COUNTRIES, WITH REFERENCE TO THE MAIN FEATURES AND ACTIVITIES OF THE ORGANISED CRIMINAL GROUPS').

STEP 1. The variables relevant to the analysis of the organised crime situation in the SEE countries were identified and grouped into two areas for analytical purposes. These areas are as follows: 1) features of the organised criminal groups, and 2) activities of the organised criminal groups.

STEP 2. The variables were translated into a series of questions aimed at analysing the main features and activities of the organised criminal groups.

STEP 3. All the formulated questions were incorporated into a semi-structured questionnaire administered to a police officer and a public prosecutor for each of the SEE countries. The organisations, which are partners of the Stability Pact, provided assistance in the identification of the national experts.

STEP 4. On the basis of the replies to the questionnaires, integrated with relevant primary and secondary sources,² a country profile for each SEE country was built up.

STEP 5. Lastly, a comparative analysis of the information collected in the various country profiles was carried out using synoptic tables, which allow an immediate comparison between the SEE countries concerning the organised crime situation in the Region.

This process led to the following conclusions with regard to Objective 1:

Conclusion n. 1. Extent and variety of OC groups and activities. OC groups are widespread in SEE countries. They have very diversified structures (not only hierarchical, but also more flexible and they may be horizontal or project-based) and cooperate in building networks to carry out criminal activities. Trafficking in human beings, money laundering, and drug trafficking are among the most pervasive criminal activities in the SEE countries.

Conclusion n. 2. G-localisation of OC. OC in SEE countries is 'g-local' (i.e. both a local reality deeply entrenched in the economic-state structure, and globalised/transnational, which, like modern enterprises, develop contacts with foreign states to develop and exploit new opportunities). This conclusion is clear in three research fields: geographic scope, composition and activities of OC groups.

Conclusion n. 3. Infiltration of OC into the legitimate economy. OC groups infiltrate the legitimate economy and in particular the following sectors: nightlife services, real estate, the financial sector, tourism, casinos, procurement, construction and the legal professions. In this endeavour OC groups utilize legal entities as shields and as a way to reinvest illicit profits.

WITH REGARD TO OBJECTIVE 2. ('TO ANALYSE HOW INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANISED CRIME FUNCTIONS AND DOES NOT FUNCTION IN THE SEE COUNTRIES').

As this objective is the core of the research study, it has been further divided into three sub-objectives. The relative methodological steps are dealt with separately as follows:

² The research used primary and secondary sources. Specifically, the following documents were analysed and collected: legislative texts, reports, other analyses compiled by international organisations and Stability Pact partners, published/unpublished literature, newspapers and journals. Furthermore, the research was integrated by semi-structured questionnaires, which were administered to a network of police officers/experts, and prosecutors/judicial experts of the Region.

WITH REGARD TO OBJECTIVE 2.1. (*'TO ANALYSE THE LEGISLATION ON INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANIZED CRIME IN THE SEE COUNTRIES, IN ORDER TO ASSESS THE DISCREPANCY BETWEEN THESE LAWS AND INTERNATIONAL AND EUROPEAN STANDARDS'*)

STEP 1. The main international and European standards on international police and judicial cooperation against organised crime were identified by analysing the relative legislative instruments and literature. The selected standards were then grouped into six areas for analytical purposes. These areas are as follows: 1) criminal law, 2) criminal procedure, 3) data protection rules, 4) multilateral and bilateral agreements, 5) direct channels of police and judicial cooperation, 6) international and regional organizations.

STEP 2. The international and European standards identified were translated into a series of questions aimed at assessing the discrepancy between the legislation on international police and judicial cooperation against organized crime of each SEE country and the above standards.

STEP 3. All the formulated questions were incorporated into a semi-structured questionnaire administered to a police officer and a public prosecutor for each of the SEE countries. The organisations, which are partners within the Stability Pact, provided assistance in the identification of the national experts.

STEP 4. On the basis of the replies to the questionnaires, integrated by the relevant primary and secondary sources,³ a country profile for each SEE country was drawn up.

STEP 5. Lastly, a comparative analysis of the information collected in the various country profiles was carried out using synoptic tables, which provide an immediate comparison between the SEE countries concerning the level of discrepancy between national legislation and international and European standards on international police and judicial cooperation against organized crime.

This process led to the following conclusions with regard to Objective 2.1:

Conclusion n. 4. Lack of harmonization of criminal law and procedure. The process of the ratification of international and European instruments against TOC is growing in all SEE countries, but there is still a lack of harmonisation related to criminal definitions (particularly with regard to money laundering, trafficking in human beings, participation in an OC group, and liability of legal entities) and criminal procedural instruments (particularly with regards to witness protection and seizure/confiscation provisions).

Conclusion n. 5. Lack of data protection rules. The 1981 COE Convention on data protection has not been ratified and the relative rules (e.g. on supervisory authorities dealing with the protection of data and on regulations to transfer personal data) have not been fully adopted in half the SEE countries. Furthermore, half the SEE

³ See previous note.

countries do not have agreements with Europol for the safe reciprocal transmission of data, and a more than a third of SEE countries have not made any bilateral/multilateral agreements of this kind in the framework of police and judicial cooperation.

Conclusion n. 6. Preference accorded to the multilateral approach in the conclusion of agreements of cooperation. Multilateral instruments for police and judicial cooperation have been ratified and used, while bilateral instruments are not so widespread, even though, where present, they are used almost as much as multinational agreements.

WITH REGARD TO OBJECTIVE 2.2. (TO ANALYSE THE PRACTICES RELATED TO INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANIZED CRIME IN THE SEE COUNTRIES, IN ORDER TO ASSESS THE LEVEL OF ENFORCEMENT OF THE RELATED LEGISLATIVE PROVISIONS).

STEP 1: The main factors that shape the enforcement of legislation were identified and grouped into three areas for analytical purposes. These areas correspond to the above identified areas 4–6 (multilateral and bilateral agreements, direct channels of police and judicial cooperation, international and regional organizations), because the enforcement factors specifically deals with legislation directly relevant to international police and judicial cooperation against organized crime.

STEP 2. A series of questions were formulated with regards to the enforcement factors. These questions were aimed at assessing the level of enforcement of the related legislative provisions.

STEP 3. All the formulated questions were incorporated into a semi-structured questionnaire administered to a police officer and a public prosecutor for each of the SEE countries. The organisations, which are partners within the Stability Pact, provided assistance in the identification of the national experts.

STEP 4. On the basis of the replies to the questionnaires, integrated by the relevant primary and secondary sources,⁴ a country profile for each SEE country was created.

STEP 5. Lastly, a comparative analysis of the information collected in the various country profiles was carried out using synoptic tables, which allow an immediate comparison between the SEE countries concerning the level of enforcement of legislation directly relevant to international police and judicial cooperation against organized crime.

This process led to the following conclusions with regard to Objective 2.2:

⁴ See note 2.

Conclusion n. 7. Lack of operative instruments for direct cooperation. There are many legal possibilities for direct police and judicial cooperation in exchanging data, but practitioners are not fully aware of their usefulness and there are few operative instruments. In particular, liaison magistrates are absent in almost all the SEE countries and there are various practical problems related to the lack of technology, lack of training and language difficulties.

Conclusion n. 8. International and regional organisations: the wide presence of Interpol and the good level of operative usefulness of the SECI Center. Interpol is the only organisation for police cooperation present in all the SEE countries, due to the lack of agreements, or even operative cooperation protocols, with the other organisations (Europol, EJM, SECI Center) dealing with police and judicial cooperation. However, where present, the SECI Center has been assessed as the organisation, which furnishes the highest level of police cooperation to the countries where it operates and it is sometimes nominated by the experts interviewed as a 'good practice'. The degree of cooperation between the other organisations and the SEE countries is considered to be medium-high, but it is still weak in some areas.

WITH REGARD TO OBJECTIVE 2.3. (TO ANALYSE THE GOOD PRACTICES OF INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANIZED CRIME IN THE SEE COUNTRIES, IN ORDER TO ASSESS THE DISCREPANCY BETWEEN THESE GOOD PRACTICES AND INTERNATIONAL AND EUROPEAN STANDARDS).

STEP 1. The main international and European standards on international police and judicial cooperation against organised crime were identified by analysing the relative legislative instruments and literature. The selected standards were then grouped into three areas for analytical purposes. These areas are as follows: 1) structures set up for international cooperation purposes, 2) databases on organised crime, 3) *modi operandi*/methods in the international cooperation process.

STEP 2. The identified international and European standards were translated into a series of questions aimed at assessing the discrepancy between the good practices of international police and judicial cooperation against organized crime of each SEE country and the above standards.

STEP 3. All the formulated questions were incorporated into a semi-structured questionnaire administered to a police officer and a public prosecutor for each of the SEE countries. The organisations, which are partners within the Stability Pact, provided assistance in the identification of the national experts.

STEP 4. On the basis of the replies to the questionnaires, integrated by the relevant primary and secondary sources,⁵ a country profile for each SEE country was created.

⁵ See note 2.

STEP 5. Lastly, a comparative analysis of the information collected in the various country profiles was carried out using synoptic tables, which allow an immediate comparison between the SEE countries concerning the level of discrepancy between national good practices and international and European standards on international police and judicial cooperation against organized crime.

This process led to the following conclusions with regard to Objective 2.3:

Conclusion n. 9. Structures set up for international cooperation purposes. Central authorities with specialised units are present in all the SEE countries, but the procedures to get a response to a request for assistance take a very long time (more than two months in six countries and up to two months in the other four). This is also because fast means of communication are not present in five countries and standardised forms to request assistance are present in only half the countries.

Conclusion n. 10. Partial absence of common databases on OC. Common criminal databases on organised crime are present only in 2 countries and national centralised databases are not always present nor, when present, accessible to foreign officers. Even when they are accessible, very often direct access is not available and formal requests or the intervention of Interpol are required. An notable exception to this trend is the Turkish 'International Urgent Intervention System', which is a good practice of cooperation that has shown good results in terms of rapidity and security in the exchange of data.

Conclusion n. 11. Gaps in modi operandi/methods to smooth the international cooperation process. Most SEE countries do not yet adopt some of the good practices of police and judicial cooperation, which are essential to smooth the process of exchanging data and carrying out assistance requests. One of the more important problems is the lack of interagency coordination protocols. They consist in agreements facilitating cooperation and sharing of data among the different national agencies involved in the cooperation process (e.g. police, judiciary, customs, frontier guard, and so on), which is essential for having a complete picture of OC in a given country to communicate to the foreign counterparts. In some SEE countries these protocols led to the creation of 'National Focal Points'. The experience of the Hungarian International Law Enforcement Cooperation Centre (ILECC) represents an example of the usefulness of these institutions.

WITH REGARD TO OBJECTIVE 3. ('TO DEVELOP RECOMMENDATIONS IN ORDER TO STRENGTHEN INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANISED CRIME IN CROSS BORDER CRIMINAL INVESTIGATIONS INVOLVING THE SEE COUNTRIES').

From the above listed conclusions, the following general recommendations for the Region have been drafted.

GENERAL RECOMMENDATION N. 1

'HARMONISING CRIMINAL LAW DEFINITIONS AND CRIMINAL PROCEDURE INSTRUMENTS'

In view of Conclusion n. 1–2 (on the extent and ramifications of OC networks in SEE countries and on types of activities that are most pervasive) and in view of Conclusion n. 4 (on the lack of harmonization of criminal law and procedure instruments against TOC), action should be taken to: (a) harmonise criminal law definitions regarding participation in an OC group, money laundering and trafficking in human beings, which are still not aligned with the Palermo Convention in some states, (b) fully enact basic witness protection provisions, which are still not operative in 5 states, and (c) enhance special means of investigation capabilities.

In view of Conclusion n. 3 (on OC infiltration of the legitimate economy through legal persons) and of Conclusion n. 4 (specifically on the absence of corporate liability and of a harmonised confiscation system in most SEE countries), action should be taken to establish forms of administrative, civil or criminal liability, and close the gaps currently present in the confiscation systems.

GENERAL RECOMMENDATION N. 2

'IMPROVING DATA PROTECTION REGIME'

In view of Conclusion n. 5 (on the gaps in data protection rules), action should be taken to promote the ratification of the 1981 COE Convention on data protection and to develop agreements, or operative cooperation protocols, with Europol and other countries for the reciprocal safe transmission of data.

GENERAL RECOMMENDATION N. 3

'ENDORISING BILATERAL COOPERATION AGREEMENTS'

In the view of Conclusion n. 6 (on the limited adoption and use of bilateral instruments of cooperation), action should be taken to promote the adoption of bilateral instruments for police and judicial cooperation at least among the states most involved in the trafficking routes that emerged from the OC analysis.

GENERAL RECOMMENDATION N. 4

'SOLVING PRACTICAL PROBLEMS REGARDING DIRECT COOPERATION'

In view of Conclusion n. 7 (on the lack of liaison magistrates stationed by SEE countries and on the other obstacles to direct cooperation and exchange of information) and of Conclusion n. 9 (on the lengthiness of procedures to get assistance through central authorities) action should be taken to reinforce figures, such as liaison magistrates, to promote this type of cooperation and to solve the practical problems that prejudice direct cooperation (lack of technology, lack of training and language difficulties).

GENERAL RECOMMENDATION N. 5

'PROMOTING COOPERATION WITH INTERPOL, THE SECI CENTER, EUROPOL, EUROJUST AND EJN'

In view of Conclusion n. 8 (on the cooperation process between SEE countries and international and regional organizations devoted to police and judicial cooperation) action should be taken to reinforce the role of Interpol Europol, Eurojust, the SECI Center and EJN in the areas where weaknesses have been highlighted.

GENERAL RECOMMENDATION N. 6

'SMOOTHING THE WORK OF NATIONAL CENTRAL AUTHORITIES MANAGING INTERNATIONAL COOPERATION'

In view of Conclusion n. 9 (on the lengthiness of assistance procedures through central authorities, on the inadequacy of technological equipment and modi operandi), action should be taken to technically improve the means of communication used by central authorities and promote the adoption of standardised forms to request assistance.

GENERAL RECOMMENDATION N. 7

'ESTABLISHING COMMON CRIMINAL DATABASES AND EASING ACCESS TO NATIONAL ONES'

In view of Conclusion n. 10 (on the lack of common criminal databases and on difficult access to centralised national databases by foreign officers), action should be taken to establish common criminal databases and to make national databases readily and directly available to officers in case of cooperation needs specially in TOC cases.

GENERAL RECOMMENDATION N. 8

'ENHANCING INTERNATIONAL COOPERATION THROUGH GOOD PRACTICES'

In view of Conclusion n. 11 (on the limited adoption of techniques to smooth the cooperation process), action should be taken to promote the use of good practices, which have been shown to speed up cooperation procedures.

The full report also contains *specific recommendations* addressed to each SEE country in order to strengthen their capacity for international police and judicial cooperation against organised crime in cross border criminal investigations. These recommendations are drawn from the detailed analysis of the organized crime situation and the obstacles to international police and judicial cooperation. All this information can be found in the country profiles, which are organized as follows:

Introduction to the main features of the criminal justice system of the country.

Paragraph 1 (The organised crime situation), which is divided into two sub-paragraphs corresponding to the two areas of analysis (*Features of the organised criminal groups* and *Activities of the organised criminal groups*).

Paragraph 2 (Legislation and practices), which is divided into six sub-paragraphs corresponding to the six areas of analysis (*Criminal law, Criminal procedure, Data protection rules, Multilateral and bilateral agreements, Direct channels for police and judicial cooperation, International and regional organisations*).

Paragraph 3 (Good practices), which is divided into three sub-paragraphs corresponding to the three areas of analysis (*Structures set up for international cooperation purposes, Databases on organised crime, Modi operandi/methods to speed up the cooperation process*).

Paragraph 4 (Emerging obstacles), in which the obstacles to the cooperation process that emerged from the above analysis are identified.

Paragraph 5 (Recommendations), in which related recommendations on how to overcome the obstacles are formulated.

3.

INTRODUCTION

This report outlines the results of the research activities carried out for the study '*The Contribution of Data Exchange Systems to the Fight against Organised Crime in the SEE Countries: an Assessment*' developed within the context of the Stability Pact Initiative against Organised Crime in South-Eastern Europe (SPOC).⁶

This Study has been carried out by TRANSCRIME, Joint Research Centre on Transnational Crime, Università degli Studi di Trento – Università Cattolica del Sacro Cuore, for the Office of the Special Coordinator of the Stability Pact for South Eastern Europe. It is funded by the Autonomous Province of Trento (Italy), the Piedmont Region (Italy), the Province of Turin (Italy) and the South East European Cooperative Initiative. The SECI – Regional Center for Combating Trans-Border Crime has contributed to the project by providing useful contact persons and information during the development of the research.

The research encompasses the following countries: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, Moldova, Poland, Romania, Serbia and Montenegro,⁷ Slovenia, Slovakia, the Czech Republic, the Former Yugoslav Republic of Macedonia (FYRoM) and Turkey. In the report we refer to these countries with the term 'SEE countries' or 'the Region'.

The goal of the study is to enhance and strengthen the process of exchanging information, by encouraging the adoption of legal instruments, bilateral and multilateral agreements and by enhancing reciprocal knowledge of practices and the capacity for cooperation. In order to achieve this goal the research was divided into three activities.

Activity 1 was completed with the 1st interim report in January 2003. That report provided information on the organised crime situation in the SEE countries and on the illicit activities perpetrated by criminal groups.

Activity 2 was completed with the 2nd interim report in February 2004, which provided information on the legislation and practices for international police and judicial cooperation against organised crime in the SEE countries.

Activity 3, the final report, summarises and updates the results of the first two activities, provides information on good practices for international police and judicial cooperation against organised crime in the SEE countries, highlights obstacles to the cooperation process, and proposes suggestions to strengthen

⁶ The Stability Pact for South Eastern Europe (SP) is an initiative that was adopted in June 1999 in Cologne by more than 40 partner countries and organizations. The aim of the Pact is to strengthen the SEE countries 'in their efforts to foster peace, democracy, respect for human rights and economic prosperity'. More detailed information on the initiative can be found at: <http://www.stabilitypact.org>.

⁷ On February 4, 2003 the Yugoslav Parliament changed the denomination 'Federal Republic of Yugoslavia' to 'State Union of Serbia and Montenegro'. In this report we use the new official denomination in the abbreviated form of 'Serbia and Montenegro'.

police and judicial cooperation in cross-border criminal investigations involving SEE countries.

4.

RATIONALE

Over the last 15 years, South Eastern European countries have undergone dramatic changes. Even the geography of the region has been redesigned. Some of the changes were the result of a peaceful process, like in the Czech and the Slovak Republics; while others were the result of conflict, which often called for the intervention of the international community as in the Federal Republic of Yugoslavia. From a political and economic point of view, many of these countries have modified their orientation, leaving a communist infrastructure in favour of a more liberal approach. This has not only affected the political scene of South Eastern Europe, but also the economy, which has moved from a state planned entity to a market economy. Almost all the countries in the region have undergone – and some are still undergoing – a privatisation process that aims to transfer state property into the hands of both national and foreign private actors.

Recent changes in neighbouring countries have also affected South Eastern Europe. The disintegration of the former Soviet Union and the creation of the Single European Market have lowered the barriers to international trade and the circulation of people.

Legitimate economic actors in Eastern and Western Europe have exploited these changes to become participants in an increasingly global marketplace. In an attempt to earn higher profits, these actors have extended their activities into new territories and modified their activities according to the demand found in this newly extended market.

Criminal actors also seek to obtain the highest possible profit from their activities and exploit the changes in the same way as legitimate investors. Organised criminal groups operate according to the laws of supply and demand that regulate profit making. Therefore, they have been acquiring a transnational dimension and their illegal activities often exceed national borders thereby involving many different countries. This means that any effective response that strives to curb organised crime must have an international dimension.

Acknowledging the significance of the problem and recognising the need to promote coordinated action against organised crime in the region, many international organisations and entities have started various initiatives. Among them, the Stability Pact Initiative against Organised Crime (SPOC) was created in 2000 by international organisations and various initiatives, with the objective of strengthening the capacity to fight organised crime in accordance with European standards. Recognising the transnational nature of organised crime, the focus of the SPOC initiative is mainly regional.

The participants in the Stability Pact have committed themselves to developing and adopting a common strategy of prevention and control to fight organised crime and related phenomena at all levels in line with European and other international standards. In accordance with these aims, the Stability Pact Initiative against Organised Crime (SPOC) was adopted by key international organisations and initiatives in a meeting held in Sofia on 5 October 2000.

This research has been conducted within this framework. Its final objective is to enhance and strengthen the process of exchanging information and to encourage the adoption of legal instruments, bilateral and multilateral agreements in addition to enhancing reciprocal knowledge of practices and capacity for cooperation.

As part of the SPOC initiative, the goal of project is to assess how information exchange systems, used in the fight against organised crime, function in the region and the way in which countries involved respond to the problem.

5.

AIM AND OBJECTIVES OF THE RESEARCH

The final aim of the project is to enhance and strengthen the process of exchanging information, by encouraging the adoption of legal instruments, bilateral and multilateral agreements and by enhancing reciprocal knowledge of practices and the capacity for cooperation.

In order to achieve this aim the research was divided into three objectives:

1. To analyse the present organised crime situation in the SEE countries, with reference to the main features and the activities of organised criminal groups.
2. To analyse how international police and judicial cooperation against organised crime functions and does not function in the SEE countries.

Given the complexity of this objective, it was further divided into three sub-objectives:

- 2.1 to analyse the *legislation* on international police and judicial cooperation against organized crime in the SEE countries, in order to assess the discrepancy between these laws and international and European standards;
 - 2.2 to analyse the *practices* related to international police and judicial cooperation against organized crime in the SEE countries, in order to assess the level of enforcement of the related legislative provisions;
 - 2.3 to analyse the *good practices of international* police and judicial cooperation against organized crime in the SEE countries, in order to assess the discrepancy between these good practices and international and European standards.
3. To develop recommendations in order to strengthen international police and judicial cooperation against organised crime in cross border criminal investigations involving the SEE countries.

6.

OPERATIONAL DEFINITIONS

The following concepts, used in this study, require an operational definition.

A. ORGANISED CRIME SITUATION IN THE SEE COUNTRIES

The concept of 'organised crime situation in the SEE countries' encompasses both a formal and a substantial meaning. It will be used in this way in order to respond to two needs: to follow the definition of organised crime currently accepted by most countries (i.e. that deriving from the 2000 United Nations Convention against Transnational Organised Crime), and to get a comprehensive picture of the main features and activities of the organised criminal groups operating in the SEE countries.

With regard to the first (formal) meaning, the term of 'organised criminal group' is that defined by the 2000 United Nations Convention against Transnational Organised Crime, Article 2:

- a structured group of three or more persons,
- existing for a period of time, and
- acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the 2000 United Nations Convention against Transnational Organised Crime,
- in order to obtain, directly or indirectly, a financial or other material benefit.

With regard to the second (substantial) meaning, variables under consideration are both related to the organised criminal groups 'features' (i.e. number, structure, composition) and organised criminal groups 'activities' (i.e. type of activities committed, geographic scope, cooperation with groups based abroad in carrying out criminal activities, infiltration of OC groups in the legitimate economy).

B. LEGISLATION ON INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANISED CRIME IN THE SEE COUNTRIES

The concept of 'legislation on international police and judicial cooperation against organised crime in the SEE countries' is intended to be comprehensive. It will be used in this way in order to get a complete picture of how international police and judicial cooperation against organised crime is regulated in each of the SEE countries.

First, the definition adopted is broad from the *formal* point of view, because it includes –for each country – a variety of legal instruments, i.e. criminal code, criminal procedure code, special legislation, legislation ratifying international instruments, and multilateral and bilateral agreements.

Second, the definition is all-encompassing from the point of view of the *contents* of the legislation. It includes not only *legislation directly relevant to international police and judicial cooperation against organized crime* (i.e. legislation on international cooperation in general, legislation on central authorities managing requests for international cooperation, bilateral agreements for direct police and judicial cooperation, agreements with international and regional organizations), but also *legislation indirectly relevant to international police and judicial cooperation against organized crime* (criminal law, criminal procedure, and data protection rules). The latter represents the legal background for international cooperation.

C. PRACTICES RELATED TO INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANISED CRIME IN THE SEE COUNTRIES

In order to clarify the meaning assigned to the concept of ‘practices in the enforcement of legislation on international police and judicial cooperation against organized crime in the SEE countries,’ in the context of this report, the necessary starting point is the distinction between ‘law in the books’ and ‘law in action’. These notions were elaborated at the beginning of the twentieth century in the leading article entitled ‘Law in Books and Law in Action’ by Roscoe Pound.⁸ Pound explained that ‘if we look closely, distinctions between law in the books and law in action, between the rules that purport to govern the relations of man and man and those that in fact govern them, will appear [...]’.⁹ Therefore, whilst ‘law in the books’ is the mere legal text, ‘law in action’ is ‘how the life of law is in its enforcement’, and thus represents the real world of the present-day criminal justice system.

Transferring this definition to the topic dealt with here, the concept of ‘practices’, or ‘law in action’, denotes how the legislation that is directly relevant for international police and judicial cooperation against organised crime is enforced in the experience of the practitioners, i.e. police officers and public prosecutors/investigating judges.

D. GOOD PRACTICES¹⁰ ON INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANIZED CRIME IN THE SEE COUNTRIES

The concept of ‘good practices of international police and judicial cooperation against organized crime in the SEE countries’ attempts to describe all the measures adopted in order to apply the formal rules of judicial and police

⁸ R. Pound, ‘Law in Books and Law in Action’, in *American Law Review*, n. 44, 1910, p. 17.

⁹ *Ibidem*.

¹⁰ The Executive Project of the study used the concept of ‘best practices’ on international police and judicial cooperation against organized crime in the SEE countries. However, during the development of the research the concept of ‘good practices’ was preferred for scientific and practical reasons. First of all, the term ‘best’ implies an evaluation of results in police and judicial cooperation, which is not included in the objectives of the research nor is feasible within the time frame limits set out in the project. The second reason for choosing the concept of ‘good practice’ instead of ‘best practice’ is that this is also the term used in the legal and political jargon of the EU *acquis communautaire* (see, for instance, Joint Action of 29 June 1998).

cooperation in the smoothest way and in order to achieve the objectives of that cooperation.

They may consist in *structures* set up for international cooperation purposes (i.e. central authorities managing requests of international cooperation), *technological means* (i.e. databases on organised crime) and *modi operandi*/methods in the international cooperation process (i.e. interagency coordination protocols, spontaneous exchange of information, etc.), which in the experience of the practitioners have led to positive results in the fight against TOC within the legal framework.

E. INTERNATIONAL AND EUROPEAN STANDARDS ON INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANISED CRIME

The concept of 'international and European standards on international police and judicial cooperation against organised crime' means the following.

First, international and European standards are defined as the benchmarks – contained in international and European legal instruments and in the relevant literature – against which the legislation and good practices¹¹ of each SEE country is assessed.

Second, as done when defining national legislation (see section B above), the concept has been used in a very broad manner. The standards for this section refer to both the standards *directly* relevant for international police and judicial cooperation against organized crime (e.g. standards on mutual legal assistance), as well as to standards *indirectly* relevant for international police and judicial cooperation against organized crime (e.g. standards on the criminal definitions of the criminal activities typically linked to organised crime, such as money laundering, drug trafficking, trafficking in persons, etc.).

Third, with regard to the source of such standards, a distinction has been made between 'international standards' and 'European standards'.

The 'international standards' are mainly included in the following legal instruments drawn up by the United Nations:

- United Nations Convention on Transnational Organised Crime and the three Protocols to the Convention (2000), and
- United Nations Convention against Illicit Traffic of Drugs and Psychotropic Substances (1988).

The 'European standards' are mainly included in the following legal instruments on international police and judicial cooperation *and* on transnational organised crime drawn up by the Council of Europe and the European Union:

¹¹ It is important to note that the standards used to assess the good practices do not only come from legislative text. This is due to the fact that good practices are currently matter of discussion among practitioners more than policymakers, and significant good practices are thus often not yet recognised officially in legal instruments. For the different methodology used in the assessment of good practices see *infra* Section 5.

- Criminal Law Convention against Corruption (1999 COE – ETS 173);
- European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990, COE – ETS 141);
- Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (1981 COE – ETS 108) and the Additional Protocol to the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (2001 COE – ETS 181);
- European Convention on Mutual Assistance in Criminal Matters (1959, COE – ETS 030) and the First additional Protocol to the Convention (1978, COE – ETS 099);
- European Convention on Extradition (1957, COE ETS 024), the first Additional Protocol to the Convention (1975, COE – ETS 086) and the Second additional Protocol to the convention (1975 COE – ETS 098);
- Convention on Simplified Extradition Procedures between the Member states of the European Union (1995);
- Convention relating to Extradition between the Member States of the European Union (1996);
- Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000) and the Protocol to the Convention (2001);
- Conclusions of the Tampere European Council (1999);
- Convention on the Protection of the European Communities' financial interests (1995), First (1996) and Second Additional Protocol (1998);
- Consolidated Version of the EU Treaty, title VI (Provisions on Police and Judicial Co – operation);
- Convention Applying the Schengen Agreement (1990);
- The Joint Action of 29 June 1998 on Good Practices in Mutual Legal Assistance in Criminal Matters.

7.

METHODOLOGY

As above mentioned (Section 3), three objectives were selected in order to reach the final aim of this project ('to enhance and strengthen the process of exchanging information, by encouraging the adoption of legal instruments, bilateral and multilateral agreements and by enhancing reciprocal knowledge of practices and the capacity for cooperation'):

1. To analyse the present organised crime situation in the SEE countries, with reference to the main features and the activities of the organised criminal groups.
2. To analyse how international police and judicial cooperation against organised crime functions and does not function in the SEE countries.

Given the complexity of this objective, it was further divided into three sub-objectives:

- 2.1 to analyse the *legislation* on international police and judicial cooperation against organized crime in the SEE countries, in order to assess the discrepancy between these laws and international and European standards;
 - 2.2 to analyse the *practices* related to international police and judicial cooperation against organized crime in the SEE countries, in order to assess the level of enforcement of the related legislative provisions;
 - 2.3 to analyse the *good practices* of international police and judicial cooperation against organized crime in the SEE countries, in order to assess the discrepancy between these good practices and international and European standards.
3. To develop recommendations in order to strengthen international police and judicial cooperation against organised crime in cross border criminal investigations involving the SEE countries.

The following steps were undertaken to achieve these objectives.

WITH REGARD TO OBJECTIVE 1. ('TO ANALYSE THE PRESENT ORGANISED CRIME SITUATION IN THE SEE COUNTRIES, WITH REFERENCE TO THE MAIN FEATURES AND ACTIVITIES OF THE ORGANISED CRIMINAL GROUPS').

STEP 1. Identification of the variables relevant to analyse the organised crime situation in the SEE countries, and their grouping into 2 areas.

This step involved an extensive review of the relevant literature and legislation dealing with organised crime as well as consultation with experts in the field. This made it possible to identify what are the major components of organised crime according to the most accepted opinions circulating among practitioners and scholars in the field.

Given the wide range of ratifications of and signatures to the 2000 United Nations Convention against Transnational Organised Crime, the definition of organised crime there stated (Article 2) was chosen as the formal point of reference for this study.

Some variables were then identified in order to analyse the substantive aspects of the organised crime situation in the SEE countries.

Examples of these variables include: the number of organised criminal groups operating in each SEE country, their composition, their structure, the types of illicit activities carried out by these groups and their geographic scope and the infiltration of organised criminal groups in the legitimate economy.¹²

The selected variables were then grouped into two areas for analytical purposes. These areas are as follows:

- 1) features of the organised criminal groups (i.e. number, structure, composition);
- 2) activities of the organised criminal groups (i.e. type of activities committed, geographic scope, cooperation with groups based abroad in carrying out criminal activities, infiltration of OC groups in the legitimate economy).

Area 1 is relevant to understand *who* are the actors in the organised criminal arena, and Area 2 is relevant to understand *what* they are doing and how.

STEP 2. Translation of the identified variables into a series of questions aimed at analysing the main features and activities of the organised criminal groups.

This step involved the formulation of a series of questions, which were incorporated into a questionnaire administered to a police officer and a public prosecutor for each of the SEE countries (see STEP 3). These questions attempted to analyse each of the variables selected in STEP 1 and to get a picture of the main features and activities of the organised criminal groups. In particular, for each variable (e.g. composition of the organised criminal group) a set of relevant items were identified (e.g. organised groups composed only of nationals; organised groups composed only of non nationals; organised groups composed of nationals and non nationals;

¹² For the full list of the selected variables, see Annex 1, Methodological Table 1.

nationality of non national members; cooperation of groups composed only of non nationals with groups composed of nationals), which were then transformed into specific questions.¹³

STEP 3. Creation and distribution of a questionnaire on the organised crime situation in each of the SEE countries.

This step involved arranging the questions into a first questionnaire that was then sent to two national experts, i.e. a public prosecutor and a police officer, for each SEE country. The organisations, which are partners within the Stability Pact, and the SECI – Regional Center For Combating Trans–Border Crime provided assistance in the identification of the national experts.¹⁴

STEP 4. Collection of the replies to the questionnaires and the creation of a country profile on the organised crime situation for each SEE country.

This step involved the collection of the replies to the questionnaire and the writing up of a country profile for each SEE country. In order to create a comprehensive country profile the replies to the questionnaire as well as secondary sources were consulted. Some of the sources that were particularly useful were reports compiled by the organisations and institutions that are partners in the Stability Pact as well as other materials, both published and unpublished.

The structure of each country profile mirrors the analytical structure of the areas decided upon in STEP 1. Thus, in the section of the country profile devoted to the analysis of the organised crime situation, two paragraphs are provided dealing respectively with features and activities of organised criminal groups.

In order to allow an immediate prospectus of the findings on the organised crime situation related to each SEE country, summarising tables are provided at the end of each country profile.

Once the country profiles were completed, they were sent to the same national experts who replied to the questionnaire to ensure their answers had been interpreted and presented properly.

STEP 5. Comparative analysis of the findings.

The last step involved the comparative analysis of the information collected in the country profiles. This analysis was done by using graphs and synoptic tables, which allow for an immediate representation of the results at a regional level (graphs) and at a comparative level (synoptic tables) concerning the *organised crime situation*, with particular reference to the main features and the activities of the organised criminal groups.

¹³ The complete list of the questions can be found in Annex 1, Methodological Table 1.

¹⁴ The two questionnaires, one for public prosecutors and one for police officers, can be found in Annex 2. the questions on the organised crime situation can be found in Section I of the questionnaires.

WITH REGARD TO OBJECTIVE 2. ('TO ANALYSE HOW INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANISED CRIME FUNCTIONS AND DOES NOT FUNCTION IN THE SEE COUNTRIES').

As this objective is the core of the research study, it has been further divided into three sub-objectives. The relative methodological steps are dealt with separately as follows:

WITH REGARD TO OBJECTIVE 2.1. ('TO ANALYSE THE LEGISLATION ON INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANIZED CRIME IN THE SEE COUNTRIES, IN ORDER TO ASSESS THE DISCREPANCY BETWEEN THESE LAWS AND INTERNATIONAL AND EUROPEAN STANDARDS')

STEP 1. Identification of international and European standards on international police and judicial cooperation against organised crime, and their grouping into six areas.

This step involved the collection and analysis of the main international and European instruments that create the legal standards for international police and judicial cooperation against organized crime. The international and European legal instruments listed in the previous section (Operational definitions) were examined in order to identify standards for international cooperation against organised crime. These were then regarded as the benchmarks against which the legislation of each SEE country was assessed.

Examples of identified standards include: the existence of legal provisions criminalizing money laundering in accordance with art. 6 of the COE Convention of 1990; the existence of witness protection legislation in accordance with art. 24–25 of the UN Convention of 2000; the existence of a supervisory authority dealing with the protection of personal data (as requested by art. art. 1 of the Additional Protocol to COE Convention of 1981); the existence of liaison magistrates/officers (as requested by art. 47 of the Schengen Convention); the existence of joint investigation teams (as requested, amongst other norms, by art. 19, UN Convention of 2000, by art. 9, par. 1, UN Convention of 1988, by art. 20, II Protocol to the COE Convention of 1959).

The selected standards were then grouped into six areas for analytical purposes. These areas are as follows:

- 1) criminal law;
- 2) criminal procedure;
- 3) data protection rules;
- 4) multilateral and bilateral agreements;
- 5) direct channels of police and judicial cooperation;
- 6) international and regional organizations.

It is worth noting that areas 1–3 create the standards indirectly relevant for international police and judicial cooperation against organized crime (criminal law, criminal procedure, and data protection rules), thereby representing the legal background for international cooperation. Areas 4–6 reflect those standards directly relevant for international police and judicial cooperation against organized

crime (legislation on international cooperation in general, legislation on central authorities managing requests of international cooperation, multilateral and bilateral agreements on direct police and judicial cooperation, agreements with international and regional organizations).¹⁵

STEP 2. Translation of the identified international and European standards into a series of questions aimed at assessing the discrepancy between the legislation on international police and judicial cooperation against organized crime of each SEE country and the above standards.

This step involved the formulation of a series of questions, which were incorporated into a questionnaire administered to a police officer and a public prosecutor for each of the SEE countries (see STEP 3). These questions attempted to assess the discrepancy between the legislation on international police and judicial cooperation against organized crime of each SEE country and the international and European standards. In particular, each international and European standard identified under STEP 1 was translated into a question aimed at verifying the existence/non existence/partial existence of the standard in the country. Since the standards were grouped in accordance to the six areas described in STEP 1, the questions that were included in the questionnaire reflect this categorisation and layout.¹⁶

STEP 3. Creation and distribution of a questionnaire about the legislation on international police and judicial cooperation against organized crime in each of the SEE countries.

This step involved arranging the questions, as explained in the two previous steps, into a questionnaire that was then sent to two national experts, i.e. a public prosecutor and a police officer, in each SEE country. The organisations, which are partners within the Stability Pact, and the SECI – Regional Center for Combating Trans-Border Crime provided assistance in the identification of the national experts.¹⁷

STEP 4. Collection of the replies to the questionnaires and the creation of a country profile for each SEE country.

This step involved the collection of the replies to the questionnaire and the writing up of a country profile for each SEE country. In order to create a comprehensive country profile the replies to the questionnaire as well as secondary sources were consulted. Some of the sources that were particularly useful were reports compiled by the organisations and institutions that are partners in the Stability Pact as well as other materials, both published and unpublished.

The structure of each country profile mirrors the analytical structure of the areas decided upon in STEP 1. Thus, there are six paragraphs which correspond to each of the areas analysed (i.e. criminal law, criminal procedure, data protection rules,

¹⁵ For the full list of the selected standards, see Annex 1, Methodological Table 2.

¹⁶ The complete list of the questions can be found in Annex 1, Methodological Table 2.

¹⁷ The two questionnaires, one for public prosecutors and one for police officers, can be found in Annex 2.

multilateral and bilateral agreements, direct channels of police and judicial cooperation, and international and regional organizations).

The findings relative to each area of analysis of legislation are discussed in a special section of the country profile specifically dealing with '*Emerging obstacles*'. This section illustrates the discrepancy between national laws and international and European standards on international police and judicial cooperation against organised crime.

In order to allow an immediate comparison of the gaps and obstacles in the legislation relative to each SEE country, summarising tables are provided at the end of each country profile.

Once the country profiles were completed, they were sent to the same national experts who replied to the questionnaire to ensure their answers had been interpreted and presented properly.

STEP 5. Comparative analysis of the findings.

The last step involved the comparative analysis of the information collected in the country profiles. This analysis was done by using graphs and synoptic tables, which allow for an immediate representation of the results at a regional level (graphs) and at the comparative level (synoptic tables) concerning the level of discrepancy between the national *legislation* on international police and judicial cooperation against organized crime of each SEE country and the international and European legal standards.

WITH REGARD TO OBJECTIVE 2.2. (TO ANALYSE THE PRACTICES RELATED TO INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANIZED CRIME IN THE SEE COUNTRIES, IN ORDER TO ASSESS THE LEVEL OF ENFORCEMENT OF THE RELATED LEGISLATIVE PROVISIONS).

STEP 1: Identification of the factors that shape the enforcement of legislation directly relevant to international police and judicial cooperation against organized crime

This step involved an extensive review of relevant literature and legislation dealing with international cooperation as well as consultation with experts in the field.¹⁸ This made it possible to identify those factors that shape the enforcement of legislation directly relevant to international police and judicial cooperation against organized crime, i.e. that provided in the above identified areas 4–6:

- 4) multilateral and bilateral agreements;
- 5) direct channels of police and judicial cooperation;
- 6) international and regional organizations.

¹⁸ Among the various experts consulted during the process of drafting of the questionnaire, Michael De Feo, United Nations Consultant, based on his practical experience in the field of international cooperation as a U.S. liaison officer in Rome, provided invaluable assistance in developing the questions on the enforcement of legal provisions related to cooperation.

The basic idea is that the enforcement of legal provisions is influenced by factors such as the frequency of use of international conventions and bilateral agreements, the ready availability of translators, the level of training of public prosecutors and police officers involved and the presence of computerised systems for collecting and sharing relevant information, etc.¹⁹

STEP 2. Formulation of a series of questions aimed at analysing the practices of international police and judicial cooperation against organized crime in the SEE countries, in order to assess the level of enforcement of the related legislative provisions.

Once these factors were identified, they were translated into questions in order to determine if they existed or to explore levels of enforcement, usefulness, cooperation etc. A Likert-type scale that ranged from 0 to 3 was utilized for these latter.²⁰

These questions were then incorporated into a questionnaire administered to a police officer and a public prosecutor for each of the SEE countries (see STEP 3). The responses to this questionnaire assisted in analysing the practices of international police and judicial cooperation against organized crime in the SEE countries. This was done in order to assess the level of enforcement of the legislative provisions directly relevant to international cooperation. Since these provisions relate only to areas 4–6, analysis of the relevant practices focussed on these areas.

STEP 3. Creation and distribution of the final questionnaire.

This step involved arranging the questions, as explained in the two previous steps, into a questionnaire that was then sent to two national experts, i.e. a public prosecutor and a police officer, in each SEE country. The organisations, which are partners within the Stability Pact, and the SECI – Regional Center for Combating Trans-Border Crime provided assistance in the identification of the national experts.²¹

STEP 4. Collection of the replies to the questionnaires and the creation of a country profile for each SEE country.

This step involved the collection of the replies to the questionnaire and the writing up of a country profile for each SEE country. In order to create a comprehensive country profile the replies to the questionnaire as well as secondary sources were consulted. Some of the sources that were particularly useful were reports compiled by the organisations and institutions that are partners in the Stability Pact as well as other materials, both published and unpublished.

The structure of each country profile mirrors the analytical structure of the areas decided upon in STEP 1 of Objective 2.1., but it only deals with areas 4–6

¹⁹ For the full list of selected factors, see Annex 1, Methodological Table 3.

²⁰ The complete list of the questions on practices can be found in Annex 1, Methodological Table 3.

²¹ The two questionnaires, one for public prosecutors and one for police officers, can be found in Annex 2.

(multilateral and bilateral agreements, direct channels of police and judicial cooperation, and international and regional organizations).

The findings relative to each area of analysis of practices are discussed in a special section of the country profile specifically dealing with '*Emerging obstacles*'. This section illustrates the level of enforcement of legislation on international police and judicial cooperation against organised crime with regard to the practices of the considered SEE country.

In order to allow an immediate comparison of the gaps and obstacles in the practices relative to each SEE country, summarising tables are provided at the end of each country profile.

Once the country profiles were completed, they were sent to the same national experts who replied to the questionnaire to ensure their answers had been interpreted and presented properly.

STEP 5. Comparative analysis of the findings.

The last step involved the comparative analysis of the information collected in the country profiles. This analysis was done by using graphs and synoptic tables, which allow for an immediate representation of the results at a regional level (graphs) and at the comparative level (synoptic tables) concerning the level of enforcement of the legislation in the practices related to international police and judicial cooperation against organized crime

WITH REGARD TO OBJECTIVE 2.3. (TO ANALYSE THE GOOD PRACTICES OF INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANIZED CRIME IN THE SEE COUNTRIES, IN ORDER TO ASSESS THE DISCREPANCY BETWEEN THESE GOOD PRACTICES AND INTERNATIONAL AND EUROPEAN STANDARDS).

STEP 1. Identification of international and European standards on good practices dealing with international police and judicial cooperation against organised crime, and their grouping into three areas.

First, this step involved the collection and analysis of the main international and European instruments that create the legal standards for good practices dealing with international police and judicial cooperation against organized crime. The international and European legal instruments listed in the previous section (Operational definitions) were examined in order to identify standards for international cooperation against organised crime. These were then regarded as the benchmarks against which the good practices of each SEE country was assessed.

Examples of identified standards for good practices include: the spontaneous exchange of information (as provided for in art. 7 of the Convention on Mutual Legal Assistance in Criminal Matters adopted on 29 May 2000); acknowledgement of all requests and written enquiries concerning the execution of requests, setting priority to requests which have clearly been marked 'urgent' (as requested by art. 1, para. 3, lett. a, of the Joint Action of 29 June 1998 on Good Practice in Mutual Legal Assistance).

Secondly,²² this step involved an extensive review of relevant literature dealing with good practices in international cooperation as well as consultation with experts in the field. This made it possible to identify other significant standards against which to assess good practices of international police and judicial cooperation against organized crime. Example of additional standards for good practices identified through the literature are: interagency coordination protocols, establishment of common criminal databases, joint operational meetings, etc.).

The selected standards were then grouped into three areas for analytical purposes. These areas are as follows:

- 1) structures set up for international cooperation purposes;
- 2) databases on organised crime;
- 3) *modi operandi*/methods in the international cooperation process.²³

STEP 2. Translation of the identified international and European standards into a series of questions aimed at assessing the discrepancy between the good practices of international police and judicial cooperation against organized crime of each SEE country and the above standards.

This step involved the formulation of a series of questions, which were incorporated into a questionnaire administered to a police officer and a public prosecutor for each of the SEE countries (see STEP 3). These questions attempted to assess the discrepancy between the good practices of international police and judicial cooperation against organized crime of each SEE country and the identified standards. In particular, each standard identified under STEP 1 was translated into a question aimed at verifying the existence/non existence/partial existence of the standard in the country. Since the standards were grouped in accordance to the three areas described in STEP 1, the questions that were included the questionnaire reflect this categorisation and layout.²⁴

STEP 3. Creation and distribution of the final questionnaire.

This step involved arranging the questions, as explained in the two previous steps, into a questionnaire that was then sent to two national experts, i.e. a public prosecutor and a police officer, in each SEE country. The organisations, which are partners within the Stability Pact, and the SECI – Regional Center for Combating Trans-Border Crime provided assistance in the identification of the national experts.²⁵

²² In this part, the methodology used for the assessment of good practices differs from the methodology used for the assessment of the legislation. This is due to the fact that good practices are currently a matter of discussion among practitioners more than policymakers, and are thus often not recognised officially in legal instruments.

²³ For the full list of selected standards, see Annex 1, Methodological Table 4.

²⁴ The complete list of the questions can be found in Annex 1, Methodological Table 4.

²⁵ The two questionnaires, one for public prosecutors and one for police officers, can be found in Annex 2.

STEP 4. Collection of the replies to the questionnaires and the creation of a country profile for each SEE country.

This step involved the collection of the replies to the questionnaire and the writing up of a country profile for each SEE country. In order to create a comprehensive country profile the replies to the questionnaire as well as secondary sources were consulted. Some of the sources that were particularly useful were reports compiled by the organisations and institutions that are partners in the Stability Pact as well as other materials, both published and unpublished.

The structure of each country profile mirrors the analytical structure of the areas decided upon in STEP 1. Thus, three paragraphs follow corresponding to each of the areas analysed (i.e. structures set up for international cooperation purposes; databases on organised crime; *modi operandi*/methods in the international cooperation process). Once the country profiles were completed, they were sent to the national experts who replied to the questionnaire to ensure their answers had been interpreted and presented properly.

The findings relative to each area of analysis of good practices are discussed in a special section of the country profile specifically dealing with '*Emerging obstacles*'. This section illustrates the discrepancy between national laws and international and European standards on international police and judicial cooperation against organised crime.

In order to allow an immediate comparison of the gaps and obstacles in the good practices relative to each SEE country, summarising tables are provided at the end of each country profile.

Once the country profiles were completed, they were sent to the national experts who replied to the questionnaire to ensure their answers had been interpreted and presented properly.

STEP 5. Comparative analysis of the findings.

The last step involved the comparative analysis of the information collected in the country profiles. This analysis was done by using graphs and synoptic tables, which allow for an immediate representation of the results at a regional level (graphs) and at the comparative level (synoptic tables) concerning the level of discrepancy between national *good practices* and the identified international and European standards on good practices dealing with international police and judicial cooperation against organized crime.

WITH REGARD TO OBJECTIVE 3. ('TO DEVELOP RECOMMENDATIONS IN ORDER TO STRENGTHEN INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANISED CRIME IN CROSS BORDER CRIMINAL INVESTIGATIONS INVOLVING THE SEE COUNTRIES').

STEP 1. Development of recommendations for each SEE country

The recommendations for each SEE country were elaborated as a direct result of the analysis on the organised crime situation and of the gaps/obstacles in legislation,

practices and good practices at a national level (see STEP 4 of Objective 1 and of Objectives 2.1, .2.2, 2.3).

This step also involved an extensive review of relevant literature as well as consultation with the national experts. This made it possible to identify practical recommendations and implementing measures for each SEE country.

The recommendations formulated for each SEE country can be found at the end of each country profile and are divided into:

- recommendations on legislation;
- recommendations on practices;
- recommendations on good practices.

This choice of location and organisation was made to allow an immediate understanding of the direct link existing between the findings on obstacles to international cooperation at different levels (legislation, practices and good practices), their discussion and the relative recommendations.

STEP 2. Development of recommendations at the regional level

The recommendations at the regional level were elaborated as a direct result of the comparative analysis on the organised crime situation and of the gaps/obstacles in legislation, practices and good practices (see STEP 5 of Objective 1 and Objectives 2.1, .2.2 and 2.3).

This step also involved an extensive review of relevant literature as well as consultation with the experts. This made it possible to identify practical recommendations and implementing measures at a regional level.

The recommendations formulated at the regional level can be found at the end of the report after the section on comparative analysis.

This choice of location was made to allow an immediate understanding of the direct link existing between the findings on obstacles to international cooperation, their discussion and the relative recommendations at the regional level.

8.

COUNTRY PROFILES

This section of the report includes the country profiles of the SEE countries, i.e. Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, Moldova, Poland, Romania, Serbia and Montenegro, Slovenia, Slovakia, the Czech Republic, the Former Yugoslav Republic of Macedonia (FYRoM), and Turkey.

Each country profile gives details of the national findings relating to the analysis of the present organised crime situation (Objective 1 of the Study) and of how international police and judicial cooperation against organised crime functions and does not function (Objective 2 of the Study). It also includes all the recommendations to strengthen its capacity for international police and judicial cooperation against organised crime in cross border criminal investigations (Objective 3 of the Study).

The findings reported here are based on two main sources: the replies by the national experts to the questionnaires administered in autumn 2002 and summer 2003 and the consultation of both primary (e.g. legislative texts) and secondary sources (e.g. literature, reports from the partners in the Stability Pact, newspapers articles, etc.). Each country profile was revised by (at least) one national expert, who updated and integrated the results as of May 2004.

It must be noted that, while for the analysis of organised crime and legislation the researchers were able to take into account both the above sources, for the analysis of practices and good practices the main source of information and judgement are the replies to the questionnaires by the experts, because of the very practical nature of the subject of inquiry. In particular, the results on the level of cooperation between the SEE countries and international and regional organisations (i.e. Interpol, Europol, Eurojust, EJM and SECI Center), summarised in the tables in paragraphs 2.6, are directly based on the judgement of the experts.

The structure of each country profile mirrors the analytical structure decided upon in the methodology (see Section 5).

A brief introduction to the main features of the criminal justice system of the country is provided, followed by the analysis of the organised crime situation and of the legislation, practices and good practices of international police and judicial cooperation.

Paragraph 1 (*The organised crime situation*) is divided into two sub-paragraphs corresponding to the two areas (*Features of the organised criminal groups* and *Activities of the organised criminal groups*) in which the variables relevant to analyse the organised crime situation were grouped for analytical purposes.

Paragraph 2 (*Legislation and practices*) is divided into six sub-paragraphs corresponding to the six areas (*Criminal law, Criminal procedure, Data protection rules, Multilateral and bilateral agreements, Direct channels for police and judicial cooperation, International and regional organisations*) in which the international and European legal standards relevant for the assessment of national legislation and their level of enforcement were grouped for analytical purposes.

Paragraph 3 (*Good practices*) is divided into three sub-paragraphs corresponding to the three areas (*Structures set up for international cooperation purposes, Databases on organised crime, Modi operandi/methods to speed up the cooperation process*) in which the international and European standards relevant for the assessment of national good practices were grouped for analytical purposes.

In paragraph 4 (*Emerging obstacles*), the obstacles to the cooperation process emerging from the above analysis are identified and in paragraph 5 (*Recommendations*) recommendations on how to overcome them are formulated.

At the end of each country profile three summarising tables are provided, which allow an immediate comparison of all the findings relating to the organised crime situation, and the legislation, the practices and the good practices of international police and judicial cooperation against organised crime.

The structure the country profiles is provided below to give an immediate overview of their contents and organisation.

INTRODUCTION

1. THE ORGANISED CRIME SITUATION
 - 1.1. *FEATURES OF THE ORGANISED CRIMINAL GROUPS*
 - 1.2. *ACTIVITIES OF THE ORGANISED CRIMINAL GROUPS*
2. LEGISLATION AND PRACTICES
 - 2.1. *CRIMINAL LAW*
 - 2.2. *CRIMINAL PROCEDURE*
 - 2.3. *DATA PROTECTION RULES*
 - 2.4. *MULTILATERAL AND BILATERAL AGREEMENTS*
 - 2.5. *DIRECT CHANNELS FOR POLICE AND JUDICIAL COOPERATION*
 - 2.6. *INTERNATIONAL AND REGIONAL ORGANISATIONS*
3. GOOD PRACTICES
 - 3.1. *STRUCTURES SET UP FOR INTERNATIONAL COOPERATION PURPOSES*
 - 3.2. *DATABASES ON ORGANISED CRIME*
 - 3.3. *MODI OPERANDI/METHODS TO SPEED UP THE COOPERATION PROCESS*
4. EMERGING OBSTACLES
 - 4.1. *OBSTACLES IN LEGISLATION*
 - 4.2. *OBSTACLES IN PRACTICE*
 - 4.3. *OBSTACLES IN GOOD PRACTICES*
5. RECOMMENDATIONS
 - 5.1. *RECOMMENDATIONS ON LEGISLATION*
 - 5.2. *RECOMMENDATIONS ON PRACTICES*
 - 5.3. *RECOMMENDATIONS ON GOOD PRACTICES*

It must be noted that the translations of legal texts reported in this Section were kindly provided by the experts interviewed or were retrieved from Internet websites and autonomous research. These translations, therefore, remain unofficial and have no legally binding value.

8.1.

ALBANIA²⁶

INTRODUCTION

Albania is located in the Western part of South Eastern Europe in close proximity to Italy and Greece. The country embarked on the path of reform in 1991, but was heavily affected by a deep financial crisis in 1997 and by the Kosovo crisis in 1999, which caused a huge flow of Kosovar refugees into its territory.²⁷ These events, together with a fragmented political scene and weak institutional framework, hampered drastic reforms and allowed organised crime to flourish, along with widespread corruption.²⁸

Albania is a parliamentary republic (art. 1 Cost.) divided into 36 districts and one municipality. It became a UN member on 14.12.1955 and a participating state to the OSCE on 19.06.1991. Albania also joined the Council of Europe on 13.07.1995.

The judiciary is independent and subject only to the Constitution and the laws (art. 145 Cost.). Specific constitutional guarantees are provided to defend this principle: the time a judge stays on duty cannot be limited; their pay and other benefits cannot be reduced (art. 138 Cost.); a High Court judge may be criminally prosecuted only with the approval of the Assembly and other judges may be criminally prosecuted only with the approval of the High Council of Justice (art. 137 Cost.).²⁹

Several reforms of the judicial system are currently taking place in Albania. Among them, of particular relevance is the establishment of a separate court system devoted to hearing cases of organized crime, human trafficking and murder, and any case in which defendants face 15 years in prison or more. The newly created Serious Crime Court has been established as existing courts lacked the resources and expertise to handle such cases. The new system includes 27 judges and began

²⁶ The following experts were interviewed for this country profile: Mr. Koli Bele, Advisor to the General Prosecutor, General Prosecution Office, Tirana, and Mr. Saimir Z. Boshnjaku, Inspector, Anti-trafficking Unit, Tirana Police District, Tirana. They answered to two questionnaires: one in Autumn 2002 and one in Summer 2003. The final revision and updating was carried out by Mr. Koli Bele in June 2004.

²⁷ Almost 500.000 people moved from Kosovo to Albania in 1999. In European Commission, External Relations Directorate General, Directorate Western Balkans, *Albania Country Strategy Paper 2002 - 2006 for the CARDS Programme*, European Commission, Brussels, 30 November 2001, p. 4. The report can be downloaded at: http://europa.eu.int/comm/external_relations/see/albania/csp/02_06_en.pdf (last verified on 22 March 2004).

²⁸ International Crisis Group, *Albania: The State of the Nation*, March 2000, available at: <http://www.nyu.edu/globalbeat/balkan/ICG030100.html> (last verified on 22 March 2004).

²⁹ Detailed information on the main Albanian democratic institutions and its judiciary is available at: <http://www.legislationline.org/index.php?country=1&org=0&eu=0> (last verified on 18 February 2004). See also Central Intelligence Agency (CIA), *The World Factbook*, 2003, available at <http://www.cia.gov/cia/publications/factbook/index.html> (last verified on 18 February 2004).

to operate on 1 January 2004.³⁰ To address widespread intimidation, Albania will provide judges with bodyguards and other security measures. They will also get better pay.³¹

Albanian criminal legislation is based on three relatively recent sources: the Constitution of 21.10.1998, the code of criminal law of 27.01.1995 and the code of criminal procedure, which was formally enacted on 05.04.1995 and entered into force on 01.08.1995.

The new criminal procedure code replaced the old inquisitorial system³² with a modern system characterized mainly by accusatorial elements: both public and private authorities can make an application for a criminal prosecution; criminal proceedings are not secret; the accused person is presumed innocent until the contrary is demonstrated; the burden of proof is mainly on the public prosecutor and there is a possibility to use 'alternative means of concluding a trial'.³³ Another accusatorial element is that a witness/accused person has to repeat his/her deposition in front of the adjudicating judge in order for the deposition to become evidence. However, some features of the inquisitorial system still remain.

As to law enforcement structures, there are specialized units dealing with organized crime at both central and local levels. In particular, inside the Ministry of Public Order (General Directorate of Police, Criminal Police Law n. 8293 of 26.02.1998) and, at a regional level, in the Regional Police Directorates, there are the following special sectors:

- Sector of the Fight against Organized Crime;
- Sector of the Fight against Economic and Financial Crime;
- Sector of the Fight against Anti-trafficking.

³⁰ On 9 January 2004, 12 prosecutors began working for the Serious Crimes Prosecution Office: Henrik Ligori, Genci Qana, Olsi Cela, Altin Dumani, Julian Papa, Ened Nakuci, Eugen Beci, Njazi Seferi, Perparim Kulluri, Adnad Xholi, Behar Dibra and Sokol Malaj. 'Prosecutors of Serious Crimes Cases Decried', in *SEE Online*, 9 January 2004, available at: http://www.southeasteurope.org/subpage.php?sub_site=2&id=10579&s_word=Serious%20Crimes%20Cases (last verified on 18 February 2004).

³¹ About US\$1,000–1,700 per month. While the wages for district judges and prosecutors were increased in 2003, the average is still very low, as it amounts at 75 000 leke (about 500 Euro taxes included) and is barely sufficient to cover the cost of living. Accordingly, the experts suggest that the salaries of district judges and prosecutors should also be increased.

³² The old criminal procedure code of 1979 used to be one of the most regressive types of inquisitorial systems. It did not recognise basic the principles of law, such as the equality of the parties in the proceedings, the right to defence, and the presumption of innocence. See B. Pavišić and D. Bertaccini, *Le altre procedure penali. Transizioni dei sistemi processuali penali*, Vol. I, Torino, 2002, p. 4–32.

³³ In the context of this report, 'alternative means of concluding a trial' include, for instance, the possibility of reducing the sentence in view of cooperation of the accused person (bargaining process) or to otherwise use discretion in the prosecution of a crime.

Additionally, each local police department has special units dealing with trafficking in human beings, drugs, children, arms and ammunition, and a Regional Centre for the Fight against Trafficking has been created in Vlora.³⁴

1. THE ORGANISED CRIME SITUATION

1.1. FEATURES OF THE ORGANISED CRIMINAL GROUPS

In 1999 it was estimated that between 25 and 100 organised criminal groups were present in Albania, with a total number of participants that ranged between 500 and 2,500.³⁵ Nevertheless, according to prosecutorial data, only 24 cases concerning the offence of criminal association have been started in Albania during recent years.

The typical structure of Albanian criminal groups is hierarchical and clan-like.³⁶ Most of the networks are based on 'loyalty' (with strict codes of conducts), 'honour' and clan traditions and are relatively 'old fashioned', similar to the structure of the Italian Mafia of forty years ago. Their members do not hesitate to use violence and threat of violence to obtain absolute unity and silence from the participants.³⁷

In the recent years some criminal organisations have been emerging that are less hierarchical and more flexible. These organisations change their structure according to the different criminal activities they undertake³⁸ and therefore their members are not permanent and change frequently. Albanian criminal groups are now evolving into more sophisticated structures, with the development of networks

³⁴ Established in March 2001, the centre of Vlora has faced difficulties with infrastructure and obtaining official recognition. Currently, it is staffed by three police agents from Italy and one from Greece. On December 2003, Albania, Italy, Greece and Germany signed an agreement concerning the Vlora centre. The document urges the centre to improve the collection of information about illegal trafficking of any kind, including drug and gun trafficking activities. 'More Support For Anti-Trafficking Centre In Albania', *SEE Online*, 9 January 2004 available at: http://www.southeasteurope.org/subpage.php?sub_site=2&id=Ibidem10591&s_word=vlora (last verified on 18 February 2004).

³⁵ European Committee on Crime Problems (CDCP), Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime, *Report on the Organised Crime Situation in Council of Europe Member States*, Council of Europe, Strasbourg, December 2000, p. 25, available at: http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Combating_economic_crime/Organised_crime/Documents/Report1999E-1.pdf (last verified on 22 March 2004).

³⁶ Originally many Albanian criminal groups resembled Calabrian mafia cells: non-hierarchical and almost always organised along family ties. They then evolved into hierarchical groups with ethnic based structures, often associated with an extreme use of violence, especially when in competition with other groups. See United Nations Office on Drugs and Crime, *Results of a Pilot Survey of Forty Selected Organized Criminal groups in Sixteen Countries, September 2002*, available at: http://www.unodc.org/pdf/crime/publications/Pilot_survey.pdf (last verified on 22 March 2004); Europol, *2003 European Union Organised Crime Report*, Luxembourg, 2003, available on the Europol site at: <http://www.europol.eu.int/publications/EUOrganisedCrimeSitRep/2003/EUOrganisedCrimeSitRep2003.pdf> (last verified on 22 March 2004).

³⁷ R. Mutschke, *The threat posed by the convergence of organised crime, drug trafficking and terrorism*, Congressional Statement, 13 December 2000, available at: <http://www.russianlaw.org/Mutschke.htm> (last verified on 25 March 2004).

³⁸ E.C. Del Re, 'Crimine e Stato in Albania', in *Quaderni Speciali di Limes*, Gruppo Editoriale L'Espresso, n.2, 2000, p. 54.

between regional criminal groups. Several criminal groups operate at local level and are in contact with each other. These arrangements make it extremely difficult to identify the ruling groups of individuals.³⁹

It appears that exclusively Albanians form most of the criminal groups and that they control the country, which tends to impede the entrance of foreign organisations. Nevertheless, some groups have both national and foreign members, where the non-nationals are mainly Italians, but also include Belgian, German, Greek and British citizens.

Albanian groups have extended their operations outside the borders of their country and operate in various states, some of which are EU members, such as Italy, Belgium, Germany, Greece, Spain and the UK. The presence of Albanian criminal groups has also been detected in Turkey, the Czech Republic, Bosnia and Herzegovina, Bulgaria Croatia, Romania and Hungary.⁴⁰

Despite their traditionally exclusive group membership, Albanian criminal groups do, however, have an increasing amount of contact with other groups based in FYRoM, Federal Republic of Yugoslavia, Greece, Moldova and even in Colombia and Venezuela.⁴¹

1.2. ACTIVITIES OF THE ORGANISED CRIMINAL GROUPS

An Italian prosecutor stated: 'Albanian organised crime has become a point of reference for all criminal activity. Everything passes through the Albanians. The route for drugs and arms and people, meaning illegal immigrants destined for Europe, is in Albanian hands'.⁴² The information available on the various activities carried out by organised criminal groups confirm this assertion.

Drug trafficking is a significant organised crime activity in the country, and internal drug consumption is also increasing.⁴³ The most common illegal drugs trafficked throughout the country are heroin, marijuana and cocaine. The heroin is generally produced in Afghanistan and it is trafficked to Albania through the Balkan route via Turkey, Bulgaria, FYRoM and Kosovo. Albanian criminals seem to control all the phases of its transportation from the producing country to Albania. Subsequently,

³⁹ United Nations Office on Drugs and Crime, *Results of a Pilot Survey of Forty Selected Organized Criminal groups in Sixteen Countries*, September 2002, cit., p. 43.

⁴⁰ 'Albania Becomes Hub for International Drug Trafficking', in *Times of India*, 2 October 2002, available at: http://www.timesofindia.indiatimes.com/cms.dll/articleshow?art_id=8841158 (last verified on 25 March 2004).

⁴¹ Ibidem. See also United Nations Office on Drugs and Crime, *Results of a Pilot Survey of Forty Selected Organized Criminal groups in Sixteen Countries*, September 2002, cit., p. 43.

⁴² 'Albanian Mafia Steps Up People Smuggling', in *BBC News*, 3 August 2000, available at: <http://news.bbc.co.uk/1/hi/world/europe/863620.stm> (last verified on 25 March 2004).

⁴³ Commission of the European Communities, *Albania. Stabilisation and Association Report 2003*, Commission Staff Working Paper, COM(2003) 139 Final, 26 March 2003, p. 31, available at: http://europa.eu.int/comm/external_relations/see/sap/com02_339.pdf. See also U.S. Department of State, *The World Factbook 2003*, 18 December 2003, at: <http://www.cia.gov/cia/publications/factbook/geos/bu.html> (last verified on 25 March 2004).

from Albania they then distribute it in Western Europe (mostly Italy and Greece).⁴⁴ Some researchers estimate that Albanian criminal groups control 60% of the heroin market in the Balkans,⁴⁵ but other more recent sources provide lower figures.⁴⁶

Albanian organised crime has also acquired considerable power outside the country's borders and has gained an important role in heroin smuggling and distribution in Western Europe, mainly at the expense of Turkish groups. One criminal pattern observed in some European Union countries is one where Albanian criminal groups first provide support to Turkish organisations and then take over the illicit market.⁴⁷ The Albanian presence in this area is particularly prominent in Germany, Switzerland, Austria and in the Scandinavian countries.⁴⁸

Albanian criminals are also involved in the trafficking of cocaine from South America that is destined for Western European markets.⁴⁹ The drug is trafficked from Italy and Greece to Albania, where it passes into the hands of the Albanian groups and is distributed to the various markets.⁵⁰

The growth of drug trafficking as a business for Albanian networks also seems to be linked to the involvement of some police officers: this alleged involvement would provide impunity to the drug barons.⁵¹

With regard to drug consumption, according to the government, there are an estimated 30.000 drug users in Albania. Heroin and marijuana abuse is growing; cocaine and crack are also available but expensive, and this restricts their use.⁵² The other drugs used in the country, which appear to be widespread among Albania's youth, are mostly amphetamine-based synthetic substances. Recently Albanians have begun establishing laboratories to produce these types of drugs.⁵³

⁴⁴ U.S. Department of State, *International Narcotics Control Strategy 2003*, March 2004, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2003/vol1/html/29838.htm> (last verified on 25 March 2004).

⁴⁵ P. Innocenti, 'Le vie della droga' in *Polizia Moderna*, n. 10, 2001.

⁴⁶ 'Albanian groups are the direct distributors of an estimated 40 percent of heroin in West European markets and may have an indirect role in as much more'. See U.S. Library of Congress, *Nations Hospitable to Organised Crime and Terrorism*, Washington, October 2003, p. 33, available at: http://www.loc.gov/rr/frd/pdf-files/Nats_Hospitable.pdf (last verified on 10 June 2004).

⁴⁷ National Criminal Intelligence Service (NCIS), *UK Threat Assessment. The Threat from Serious and Organised Crime 2003*, p. 43, available at: <http://www.ncis.co.uk/ukta/2003/ukta2003.pdf> (last verified on 23 March 2004).

⁴⁸ R. Mutschke, *The Threat Posed by the Convergence of Organised Crime, Drug Trafficking and Terrorism*, cit. See also National Criminal Intelligence Service (NCIS), *UK Threat Assessment. The Threat from Serious and Organised Crime 2003*, p. 43, available at: <http://www.ncis.co.uk/ukta/2003/ukta2003.pdf> (last verified on 23 March 2004).

⁴⁹ U.S. Department of State, *International Narcotics Control Strategy 2003*, cit.

⁵⁰ In August 2000 police forces seized 9 tons of cocaine in Venezuela, which was destined for Albanian criminal groups through an extensive commercial network made up of Greek and Venezuelan citizens. See, P. Innocenti, 'Le vie della droga', cit.

⁵¹ International Crisis Group, *Albania: The State of the Nation*, May 2000, available at: <http://www.ess.uwe.ac.uk/Kosovo/Albania2.htm>

⁵² U.S. Department of State, *International Narcotics Control Strategy 2003*, cit.

⁵³ Laboratories seem to be mostly located close to the Macedonian border, in: R. Mutschke, *The Threat Posed by the Convergence of Organised Crime, Drug Trafficking and Terrorism*, cit.

The only other kind of psychotropic substance produced in Albania, i.e. cannabis, is largely trafficked to Italy⁵⁴ and Greece and only a small part is reported to be consumed within the borders of the country.⁵⁵

One of the most profitable organised crime activities in Albania is the **trafficking of human beings**, even if law enforcement efforts after the summer of 2002 (especially with the joint Police and Prosecution operation 'Puna') have reduced human trafficking via speed boat to almost zero. Increased controls at borders have also reduced the number of illegal emigrants travelling on falsified documents. However, due to its favourable geographic position, Albania continues to play a fundamental role in a very lucrative trafficking chain, which seems to unite many countries in Eastern Europe to numerous Western European States.⁵⁶

As far as this form of crime is concerned, Albania is both an origin and a transit country. The victims are mainly women and young girls from Albania,⁵⁷ Romania, Moldova, Bulgaria and the Ukraine.⁵⁸ The victims are trafficked to various EU countries, especially Italy, Greece, Belgium, The Netherlands and the United Kingdom.⁵⁹ Albanian victims aged 14–32 are mainly trafficked for sexual exploitation and some of them are exploited as beggars and other criminal offences.⁶⁰

In Italy Albanian organised crime is reported to control the prostitution market and has taken over from indigenous organised criminal groups, especially in Milan⁶¹ and Turin.⁶²

Children are trafficked to Western European countries, where they are put on the streets as beggars. Often they are transported alongside girls and women who are trafficked for prostitution purposes, so that if police detect the traffic the women

⁵⁴ Albanian cannabis is for the most part trafficked to Apulia and then distributed throughout the country. Direzione Investigativa Antimafia, *Relazione al Parlamento*, January 2000, available at: http://www.interno.it/dip_ps/dia/1sem2000.htm (last verified on 25 March 2004).

⁵⁵ G. Leclair, 'Drug Trafficking situation in Europe', paper presented at the conference *International Conference on Drugs Policy in Europe*, 28 February 2002, available at: <http://www.hnsweden.com/0000/mar00/00mar3-003.htm> (last verified on 25 March 2004).

⁵⁶ U.S. Department of State, *Trafficking in Persons Report 2003*, available at: <http://www.state.gov/g/tip/rls/tiprpt/2003/21275.htm> (last verified on 24 March 2004). See also UNICEF, UNOHCHR, OSCE/ODIHR, *Trafficking in Human Beings in South Eastern Europe*, 2002, p. 125, available at: <http://www.unhcr.ch/women/trafficking.pdf> (last verified on 24 March 2004).

⁵⁷ In Albania abduction and violence are commonly used means to carry out trafficking of women and children for the purpose of sexual exploitation and begging. See Lehti M, *Trafficking in women and Children in Europe*, Paper n. 18, Helsinki, 2003, p. 23–24, available at: <http://www.heuni.fi/uploads/to30c6cjxyah11.pdf> (last verified on 24 March 2004).

⁵⁸ U.S. Department of State, *Trafficking in Persons Report 2003*, cit.

⁵⁹ M. Lehti, *Trafficking in women and Children in Europe*, cit. p. 23–24.

⁶⁰ U.S. Department of State, *Trafficking in Persons Report 2003*, cit.

⁶¹ I. Burrel, 'Albanian Mafia Takes Control of Soho Vice Scene', in *The Independent*, 18 June 2001, available at: <http://www.alb-net.com/pipermail/albanian-uk/2001-June/001006.html>

⁶² Procura Generale di Torino, *Statistiche della Procura Generale di Torino 1997 – 2002*, unpublished.

say that the children are their sons or daughters.⁶³ Over the last few years, however, there has been an overall decrease in the number of trafficked Albanian minors to Italy and Greece. The means of trafficking have also been changed in order to overcome the tightened maritime controls over Adriatic crossing points. Victims are more often re-routed through Greece and transferred by ferry or plane to Italy.⁶⁴ For the same reasons traffickers of children have also tried to provide apparently legal features: such as visas and other regular documents for travel to western countries.⁶⁵

Another allegedly widespread trafficking offence occurring in Albania regards **arms**. Albania is both an originating, transit and destination country of arms and weapons smuggling. Arms smuggling from Albania to Kosovo and FYRoM can be traced back to 1992. It flourished, along with petrol smuggling, at the time of the embargo imposed on Serbia and Montenegro by the international community.⁶⁶ In 1999 organised crime drug barons provided arms and money to groups that supported the independence of Kosovo from Serbia. In 1999 an Albanian citizen was arrested in Italy and accused of being one of Albania's most powerful drug barons and of providing a million dollars worth of weapons to the movements that were fighting for Kosovo independence.⁶⁷ Other Albanian criminal groups allegedly provided the Kosovo Liberation Army (KLA) with weapons that were paid for, in part, with heroin. The main route used by traffickers was the so-called 'Yugoslav Route', because they exploited the weapons surplus generated by the conflict in the Federal Yugoslav Republics. The weapons obtained in the Yugoslav Republics were then introduced into Kosovo via Albania, but some of them were also trafficked from Albania to Germany, Belgium, Switzerland and Denmark.⁶⁸ The trafficking of weapons continues to be a serious problem at the present time. In a recent case (August

⁶³ E.C. Del Re, 'Crimine e Stato in Albania', *cit.*, p. 56.

⁶⁴ IOM/Stability Pact for South Eastern Europe/ICMC, *Regional Clearing Point Report*, 2003, available at: <http://www.icmc.net/files/rcp2003full.en.pdf> (last verified on 24 March 2004).

⁶⁵ Children's Human Rights Centre of Albania - CRCA, *Child Trafficking in Albania. A Comprehensive Report on Child Trafficking in Albania*, Tirana, July 2003, available at: <http://www.crca.org.al/national%20reports.htm> (last verified on 24 March 2004). See also On line Pravda, *Albania: traffic in children increase*, 19 June 2002, available at: <http://english.pravda.ru/society/2002/06/19/30625.html> (last verified on 24 March 2004). See also U.S. Department of State, *Trafficking in Persons Report 2003*, *cit.*

⁶⁶ M. Chossudovsky, 'Kosovo and Organised Crime. Part 2', in *The Guardian*, 26 May 1999, available at: <http://www.cpa.org.au/garchive/955kos.htm> (last verified on 24 March 2004).

⁶⁷ Together with the above-mentioned Albanian citizen - Agim Gashi - another 124 persons were arrested for operating a network of drug and weapons trafficking, which covered various countries. In R. Ruscica, 'Albanian Mafia, This is how it Helps the Kosovo Guerrilla Fighters', in *Corriere della Sera*, 15 October 1998, available at: <http://www.nationalism.org/sf/Articles/a64.htm> (last verified on 24 March 2004). See also: 'Crimes Committed in Italy Provide Funds for Kosovo Guerrillas', in *Corriere della Sera*, 19 January 1999, available at: http://adsl10.cjnetworks.com/backissues/1999/SIT_2-4-Kosovo-Mafia.html (last verified on 15 February 2003).

⁶⁸ V. Alexe, 'Albania KLA Terrorists pay for weapons in Heroin', in *Romania Libera*, 30 July 1998, available at: <http://csf.colorado.edu/pen-l/mar99/0635.html> (last verified on 24 March 2004).

2002) some 18,000 rounds of ammunition, several guns and around 100 grenades were discovered in a cave besides a road near the Macedonian border.⁶⁹

Albanian groups are also involved in the **trafficking of stolen vehicles**.⁷⁰ According to the owner of the Mercedes dealership in Tirana there are 140,000 Mercedes in Albania and from 6,000 to 8,000 of them are stolen cars that have been smuggled into the country by criminal groups. Mercedes are not the only cars smuggled to Albania. '*Markets of smuggled cars offer every kind of luxury vehicle, including four-wheel drive wagons, for less than Euro 15,000*'.⁷¹ Tirana is the final stop on a trafficking route that starts in Germany and Italy, goes through Bulgaria and FYRoM and finishes in Albania. Cars stolen in Bulgaria are also trafficked to Albania through this same route. A small number of the cars is further transported on to FYRoM and Montenegro, but the majority are allegedly sold on the Albanian market.⁷²

The large scale **smuggling** of cigarettes, petrol and coffee to Montenegro started in 1993 as a consequence of the embargo imposed by the United Nations on Yugoslavia. The area continued to be a smuggling haven during the turmoil that swept Albania in 1997.⁷³ The Albanian government loses a massive amount of money because of cigarette smuggling every year. The editor in chief of an Albanian daily economic paper, states that, although there are no official figures, '*experts have estimated fiscal evasion from tobacco smuggling at 70 percent*'.⁷⁴

Organised crime is also involved in **loan sharking**. In Albania the income per head is the lowest in Europe and most of the population needs money, but is not in a position to obtain a loan from any financial institution. For this reason citizens ask for loans from people and companies, who cannot legally lend money. In return they are asked to pay loan fees that are higher than those permitted by the law. Some of these persons and companies, who have cash available, are involved in organised crime. Data for the year 2000 report that usury was such a great problem in Albania in the late 90s and that it was reported to be the cause of approximately 70 suicides a year (of an average yearly total of 120).⁷⁵

Corruption appears to be widespread in Albania and it is perceived to be the major problem in the country, undermining its development and difficult to eradicate also

⁶⁹ International Crisis Group, 'Albania: State of the Nation 2003', in *ICG Balkans Report*, n. 140, 11 March 2003, Tirana/Brussels, available at: http://www.crisisweb.org/library/documents/report_archive/A400917_11032003.pdf (last verified on 25 March 2004).

⁷⁰ A. Maritati, *Organised Crime in the Balkans with Reference to Albania*, Centro Studi di Politica Internazionale, Roma, 16 November 2002, available at: <http://www.cespi.it/Rotta/maritati.pfd> (last verified on 25 March 2004).

⁷¹ A. Bala, 'Car Dealers in Albania Threatened by Smugglers', in *the Balkan Times*, 07 August 2002, available at: <http://www.balkantimes.com/html2/english/020730-ALBAN-001.htm>

⁷² Ibidem.

⁷³ 'Police Try to Block Smuggling in the North', in *The Albanian Times*, 1 December 1998, available at: <http://www.hri.org/news/agencies/albatim/1998/98-01-12.albatim.html#12>

⁷⁴ L. Cota, 'Analysis: Balkans Crack Down on Smugglers', in *The Washington Times*, 12 May 2002, available at: <http://www.washtimes.com/upi-breaking/12052002-013531-5126r.htm>

⁷⁵ E.C. Del Re, 'Crimine e Stato in Albania', cit., p. 63.

because of social acceptance of graft.⁷⁶ Organised crime and corruption are often linked, because corrupting public officials, law enforcement and customs officers, who are often badly paid for their public services and thus easy targets, lowers the risk of criminals being arrested and brought to trial. According to a report issued in 2000 by the World Bank, the corrupt practices particularly rooted in the country are: the payment of bribes to public officials in order to avoid taxes and regulations; the sale of court and arbitration decisions; the contribution by private interests to political parties; the sale of parliamentary votes as well as presidential decrees; the appointing of friends and relatives to official positions.⁷⁷ Unfortunately, this report like others dealing with corruption in the country does not investigate the identity of the subjects bribing public officials and law enforcement agents. Therefore it is not possible to determine to what extent the acts listed above are carried out in favour of criminal organisations and to what extent they are done in favour of citizens, who are not involved in organised crime. A more recent report by GRECO identifies the Judiciary, the Customs, the Privatisation Agency and the Health Service as the most corrupt offices. However, problems are also present at tax offices and in the field of public order.⁷⁸ Other sectors recently affected by corruption are the medical services and the educational system.⁷⁹

Organised crime groups use Albania as a base of operations for conducting criminal activities in other countries and often the proceeds from these activities are **laundered** in Albania because of weak government controls and weak financial structures.⁸⁰ The economy is still mainly based on cash (90 to 95% of all transactions are carried out by this means of payment) and this is mainly the consequence of the deep financial crisis that occurred in the country in 1997, which created widespread distrust in the banking system. In fact, according to the Central Bank of Albania, 33% of the money in circulation is outside of the banking system and informal channels of remittance transfers offer opportunities to criminal organisations to launder their profits from drug trafficking and the prostitution of trafficked women.⁸¹ As far as the integration stage is concerned, criminal assets are generally reintroduced into the Albanian economy through the purchase of real estate, tourist agencies, nightlife services and business investments. The construction industry also seems particularly susceptible to being exploited for

⁷⁶ Albanian Centre for Economic Research, *Albanian Empirical Report*, Tirana, 2000, available at <http://www1.oecd.org/daf/SPAIcom/pdf/AlbEmp.pdf> (last verified on 25 March 2004). See also International Crisis Group, 'Albania: State of the Nation 2003', cit., p. 7; and U.S. Department of State, *International Narcotics Control Strategy 2003*, cit.

⁷⁷ World Bank, *Anti Corruption in Transition: A Contribution to the Policy Debate*, Washington DC, 2000, available at: <http://www.worldbank.org/wbi/governance/pdf/contribution.pdf> (last verified on 25 March 2004).

⁷⁸ GRECO, *Evaluation Report on Albania– First evaluation Round*, Strasbourg, 9–13 December 2002, available at: [http://www.greco.coe.int/evaluations/cycle1/GrecoEval1Rep\(2002\)9E-Albania.pdf](http://www.greco.coe.int/evaluations/cycle1/GrecoEval1Rep(2002)9E-Albania.pdf) (last verified on 25 March 2004).

⁷⁹ Corruption operates both in state and in private clinics. See International Crisis Group, 'Albania: State of the Nation 2003', cit., p. 7.

⁸⁰ U.S. Department of State, *International Narcotics Control Strategy 2003*, cit.

⁸¹ E. Uruçi and I. Gedeshi, 'Remittances Management in Albania', in *CESPI Working Papers*, n.5, 2003, p. 9, available at: <http://www.cespi.it/WPMIG/Uruçi-Gedeshi.pdf> (last verified on 25 March 2004).

money laundering and for infiltrating the legitimate economy.⁸² Another means of integrating illicit proceeds is the direct purchase of treasury bills by individuals from the Central Bank.⁸³ Some of the laundering operations have been moved to Kosovo and the money is generally laundered through tourist agencies.⁸⁴

2. LEGISLATION AND PRACTICES

2.1. CRIMINAL LAW

Albania has recently ratified all the relevant international and European instruments against organised crime: the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (entered into force on 25.09.2001), the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (entered into force on 01.02.2002), the 1999 Council of Europe Criminal Law Convention on Corruption (entered into force on 01.07.2002), the 2000 United Nations Convention against Transnational Organised Crime and its Protocols (ratified on 21.08.2002), with the sole exception of the UN Protocol against Firearms.

Accordingly, the Albanian Criminal Code (Law n. 7895 of 27.01.1995) was amended to criminalize all the main forms of organized criminal activities and harmonize criminal definitions with European and international standards.

However, the translation of the international and European agreements into the national law does not seem to be accurate in all the instances.

The main gap in the Albanian legislation against organized crime appears to be related to the lack of provisions on liability of legal persons. In fact, art. 45 of the Criminal Code (*Criminal sanctions for juridical/legal persons*) was abrogated by Law n. 8733 of 24.01.2001. A draft law on the criminal responsibility of legal entities in corrupt acts is due to be enacted in May 2004.

Participation in a criminal association is dealt with in both the General Provisions (art. 28, *Armed gang and criminal organization*)⁸⁵ and in the Special Provisions of

⁸² Financial Action Task Force (FATF), *FATF Annual Report 2001 - 2002. Annex D*, Strasbourg, 2002, p. 1 - 4, available at: http://www.fatf-gafi.org/pdf/AR2002_en.pdf (last verified on 25 March 2004)

⁸³ U.S. Department of State, *International Narcotics Control Strategy 2003*, cit.

⁸⁴ E.C. Del Re, 'Crimine e Stato in Albania', cit., p. 63.

⁸⁵ Art. 28 (Armed gang and criminal organization): 1. Armed gang and criminal organization represent particular forms of collusion which differ not only with respect to the number of participants, but also on their level of organization and persistence to commit a number of criminal acts. 2. A criminal organization represents the highest degree of collusion for committing a consistent criminal activity. 3. The creation and participation in an armed gang or in criminal organizations, as well as their committing of criminal acts, are qualified as specific criminal acts and are punished according to the provisions of the Special Part of this Code. 4. Members of an armed gang or a criminal organization bear responsibility for all criminal acts committed by the gang or the organization if they have acted either as organizers or executors or instigators or helpers. 5. A member of an armed gang or a criminal organization bears no criminal responsibility for collusion when he repents and helps the competent authorities to prevent the [criminal] activity and identify the collaborators. 6. It is a circumstance for mitigating the punishment, and in some particular cases, for lowering it under the minimum provided for by law, if a member of an armed gang or of a criminal organization which has committed criminal acts repents and cooperates with the competent

the Criminal Code (art. 284/a, *Organizing and leading criminal organizations with the goal of cultivating, producing, fabricating or illegal trafficking of narcotics*, and Chapter IX. *Criminal acts committed by an Armed Gang or Criminal Organization*).⁸⁶

The Albanian criminal code also provides for the criminalisation of money laundering. The old provision (art. 287, *Alienation of property*), which was deemed to be inadequate by the examiners of the Council of Europe,⁸⁷ has recently been updated with a new Article 287/a (in effect from 13.3.2001).⁸⁸ It separately criminalizes money laundering on an all crimes basis. The basic offence carries a maximum sentence of 10 years, and where there are aggravating circumstances, a sentence of 15 years can be imposed. Albania also passed a new special Law on the Prevention of Money Laundering (Law n. 8610) on 17.05.00, which came into force on 06.12.00.

Drug related offences are tackled by art. 283 CC (*Manufacturing and selling of narcotics*) and art. 283/a CC (*Traffic of narcotics*). The first provision criminalizes the conducts of '*manufacturing, blending, preparing, distributing, keeping, offering for sale, selling, delivering by any means, transporting any sort of narcotic drug or psychotropic substance in breach of the law*', and imposes a punishment from five to fifteen years of imprisonment. More serious is the punishment of the conducts of '*organizing, managing or financing*'. This activity is punishable with ten to twenty years of imprisonment. The second provision deals with the '*creation of facilities to take or use narcotics in contravention of relevant legal dispositions by persons, who*

authorities to discover the [criminal] activity and the other collaborators. 7. If the court holds that the role played by the member of the armed gang or criminal organization who repents is not cardinal, when the acts he has committed are not extremely dangerous and when the help he has given for the discovery of the [criminal] activity and of the collaborators of the gang is important, it may exclude him from sentencing.

⁸⁶ Art. 284/a (Organizing and leading criminal organizations): 1. Organizing, leading and financing criminal organizations with the goal of cultivating, producing, fabricating or illegal trafficking of narcotics is punishable by imprisonment of 10 up to 20 years. 2. Creation of conditions or facilities for such activities by persons with state functions is punishable by imprisonment from 5 to 15 years.

Art. 333 (Creating an armed gang or criminal organization): Creating an armed gang or criminal organization or participating therein, with the intent of committing crimes, is punishable by five to fifteen years of imprisonment.

Art. 334 (Committing crimes by an armed gang or criminal organization): 1. Committing crimes by an armed gang or criminal organization shall be sentenced according to respective criminal provisions adding five more years to the sentence given for the crime committed, when the referring provision contains imprisonment and another lighter punishments, but without exceeding the maximum term of imprisonment. 2. When the respective criminal provision contains imprisonment or life imprisonment or the death penalty, it is punishable by twenty five years of imprisonment or life imprisonment. 3. When the respective criminal provision contains life imprisonment, it is punishable by life imprisonment.

⁸⁷ Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV), *Annual Report 2000*, p. 37-41, available at http://www1.oecd.org/fatf/pdf/CoE-AR2000_en.pdf (last verified on 18 February 2004).

⁸⁸ Art. 287/a (Money laundering): 1. Commission of financial transactions or other economic transactions for the purpose of money laundering, which are known to stem from criminal activity, and their re-circulation and production for entrepreneurial or economic activity of any kind, is punished by five to ten years of imprisonment. 2. The same offence, if committed in collusion with others or repeatedly, is punishable by seven to fifteen years of imprisonment, and if it has caused serious consequences, by not less than fifteen years of imprisonment.

administer such substances as part of their duties' which is punishable by up to 10 years imprisonment.⁸⁹

The crime of trafficking in human beings has recently been included in the Albanian criminal code (art. 110/a CC).⁹⁰ In addition, the Albanian criminal code includes special provisions on the trafficking of women for prostitution and the trafficking of children (art. 114/b and 128/b). However, the definitions included in the articles appear to be vague, as the only specific requirement is the purpose of profit. In a recent COE report these definitions are criticised because 'it is impossible to make a clear distinction between trafficking in human beings and facilitation of illegal border crossing'.⁹¹ It would thus be necessary to amend the Albanian criminal code to bring it more into line with the definition envisaged in the UN Protocol on Trafficking.

2.2. CRIMINAL PROCEDURE

As regards the adoption and ratification of the international and European instruments against organised crime, Albanian criminal procedure has also been amended to harmonise it with these standards and provide new tools for law enforcement agencies and prosecution offices. Of particular relevance are the following provisions:

- the adoption of special means of investigation for all serious crimes, such as interceptions of telephone conversations, fax and internet transmissions, audio and video recording of events taking place in private premises (art. 221–226 CCP and art. 16 of the Drug Law), controlled delivery in drug cases (Law n. 8750) and in trafficking of human beings cases (especially in cooperation with Italian law enforcement agencies).⁹² In addition, the recent amendments made by Law no.9187, dated 12.02.2004, on Section IV 'Interceptions of Conversations or Communications' of the CCP is extended and changed the whole section Articles 221–226 re-named 'Interceptions'. It provides detailed procedures for

⁸⁹ Albanian efforts against drug trafficking are testified to by the numerous policy actions activated in this field. The INCSR 2002–2003 reports that in 2001 Albania approved a law on the Prevention of the Illegal Trafficking of Narcotics and on the establishment of an Inter-Ministerial Drug Control Committee. In March 2002, Parliament approved a Law on the Control of Chemicals Used for the Illegal Manufacturing of Narcotic and Psychotropic Substances, regulating the import and use of precursor chemicals. See U.S. State Department, *International Narcotics Control Strategy Report 2002*, March 2003, available at <http://www.state.gov/g/inl/rls/nrcrpt/2002/html/17949.htm> (last verified on 18 February 2004).

⁹⁰ Art. 110/a (Trafficking in human beings): 1. Trafficking of human beings with the purpose of material profit or any other profit is punished by five to fifteen years of imprisonment. 2. The same offence, if committed in collusion with others or repeatedly, or is accompanied with maltreatment and compulsion by [exercising] physical or psychological pressure against the victim [to have them] perform different actions, or if it [the offence] causes serious consequences to health, is punished by not less than fifteen years of imprisonment and, if it causes death, by life imprisonment.

⁹¹ M. Giammarinaro, *Opinion and Commentary on the Legal Provisions on Trafficking in Human Beings Applicable in Albania*, LARA Project – Criminal Law Reform Against Trafficking in Human Beings, March 2003, p. 3, available at the Council of Europe website (last verified on 18 February 2004).

⁹² Interceptions can only be authorised by a court order, while audio and video recording may be authorised by investigative agencies and controlled delivery by the prosecutor. If these authorisations are given the intercepted material can be used in a criminal trial as evidence.

interceptions, means, authorisation, documentation, appealing etc. It also entitles the General Prosecutor to take such a measure related to any person without any court decision concerning serious criminal offences.

- the adoption of a confiscation regime characterised by an 'all crimes approach', which means that it is possible to confiscate the proceeds from all types of crimes. Art. 30 CC (*Supplementary punishments*) establishes that '*besides the principal punishment, a person who has committed offences or criminal contravention may also be sentenced to [...] confiscation of the means relevant to the commitment of the criminal act and of the profits deriving from it*'. Not only 'property confiscation' is admitted, but also 'value confiscation'.⁹³ Criminal conviction is not always a prerequisite for confiscation provisions to apply, as this is possible also for violations of administrative laws; this means that confiscation can be carried out independently of conviction. However, the above mentioned confiscation regime is not completely consistent with international and European standards. In fact, it is not possible to put the *onus probandi* on the defendant to show the legal origin of his assets in order to avoid confiscation, but it is always up to the prosecutor to prove this (the so-called 'issue of the burden of proof').⁹⁴
- the adoption of a witness protection law (Law no. 9205, dated 15.03.2004 which entered into force on 01.05.2004, '*On the protection of witnesses and justice collaborators*') and further CCP implementing amendments.⁹⁵ In addition, a Witness Protection Task Force has been operating informally since May 2002. This force is composed of representatives from the Ministry of Public Order, the the General Prosecutor's Office, IOM, OSCE and other international organizations, whow will shortly be signing a Memorandum of Understanding. A National Plan of action was adopted by Government Decision 674 (07.12.2001).⁹⁶ In a recent bilateral an agreement has recently been signed in Sofia (11.12.2003) with Bulgaria in order to allow Bulgarian witnesses from legal proceedings who need protection to be sent in Albania and *vice versa*.⁹⁷

⁹³ Art. 36 (Confiscation of the means for committing the criminal act): Confiscation is necessarily decided by the court on persons committing criminal acts, and consists in the seizure and transfer in favour of the state of the means which served or were chosen as a means to commit a criminal act, as well as the objects, money, and any other property resulting from the criminal act or the reward given or promised for its commitment.

⁹⁴ Besides the elements pointed out above, the examiners from the Council of Europe, Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL), have criticised the Albanian system of confiscation as it is not mandatory, but only discretionary. Financial Action Task Force on Money Laundering (FATF), *Annual Report 2001-2002*, Paris, 21 June 2002, p. 37-41. The report is available at http://www.fatf-gafi.org/pdf/AR2002_en.pdf (last verified on 18 February 2004).

⁹⁵ The text in English of Law no. 9205 is available on the CD 'Legal Materials' attached to this report.

⁹⁶ Council of Europe (LARA Project - Criminal Law Reform Against Trafficking in Human Beings), Comparative Table on Legislative Reform and National Plan of Action, working document for the Final Regional Seminar on Criminal Law Reform to Prevent and Combat Trafficking in Human Beings in South-Eastern Europe, Durrës, 30 October - 1 November 2003, available at the Council of Europe website (last verified on 18 February 2004).

⁹⁷ 'Bulgaria, Albania Sign Agreement on Witness Protection', *SEE Online*, 11 December 2003, available at: http://www.southeastern.org/subpage.php?sub_site=2&id=10333&s_word=%20Agreement (last verified on 18 February 2004).

2.3. DATA PROTECTION RULES

The 1981 COE Convention has not been signed by Albania, nor there is any bilateral/multilateral agreement within the framework of police and judicial assistance including specific provisions for personal data protection.

Art. 35 and art. 81 of the 1998 Albanian Constitution provides the formal basis for the national legislation (Law n. 8517 on the 'Protection of Personal Data' enacted on 22.07.1999)⁹⁸ and there is also a data protection authority: the 'People's Advocate' (Law 8454 of 04.02.1999). However, the material implementation of the basic rules for data protection is still almost inexistent: no registration or notification duties are in place and no special authorisation for exportation is required by the law.⁹⁹

The provisions of the 1998 Law do not apply to law enforcement agencies and prosecution offices, because even if they deal with 'personal data' (defined by art. 2 as 'any data of an identified or identifiable person'), the personal data obtained in the course of criminal investigations and court proceedings do not fall in the scope of the law (art. 4, *Exemptions*).

Even in the absence of general legislation applicable to them, law enforcement agencies and prosecution offices are duty-bound to:

- ensure that personal data are not further processed in a way that is incompatible with the purposes for which data were collected, and
- apply security measures to these data.

The person ultimately responsible for the application of data protection provisions during the investigations conducted by police are individual judges and prosecutors.

2.4. MULTILATERAL AND BILATERAL AGREEMENTS

a) Legislation

Albania has signed and ratified several international and European instruments for judicial and police cooperation: the European Convention on Extradition (1957 COE – ETS 024), the First additional Protocol to the European Convention on Extradition (1975 COE – ETS 086), the Second additional Protocol to the European Convention on Extradition (1975 COE – ETS 098), and the European Convention on Mutual Assistance in Criminal Matters (1959 COE – ETS 030).

In addition Albanian officers and prosecutors may make use of the international cooperation provisions provided for in the following specific instruments against organised crime: the United Nations Convention against Illicit Traffic of Drugs and Psychotropic Substances (1988), the European Convention on Laundering, Search,

⁹⁸ The text of Albanian Data Protection Law is available on the CD '*Legal Materials*' attached to this report.

⁹⁹ For a synoptic table of data protection provisions and their implementing elements in Albania, see the 'National Laws' prospect available on the following page of the Council of Europe website: http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Data_protection.

Seizure and Confiscation of the Proceeds from Crime (1990, COE – ETS 141), the Criminal Law Convention against Corruption (1999 COE – ETS 173), and, since 2002, the 2000 United Nations Convention against Transnational Organised Crime and its Protocols (ratified on 21.08.2002).

Albania also entered into bilateral and multilateral agreements regulating international judicial assistance with at least 5 SEE countries (the Czech Republic, FYRoM, Slovenia, Serbia–Montenegro¹⁰⁰ and Turkey) and almost all the EU countries (with the exception of Finland and Ireland). However, the cooperation takes place mainly through the framework of the European Convention on Mutual Assistance in Criminal Matters and its Protocols.

Besides this international framework, Albanian prosecutors are obliged to respond to foreign assistance requests according to the provisions of the Code of Criminal Procedure (Law n. 7905 of 21.03.1995), provided that the dual criminality requirement is fulfilled.¹⁰¹ In particular Title X, *Jurisdictional Relations with Foreign Authorities*, establishes the legal requirements for the main forms of formal cooperation: extradition (art. 488–502), rogatory letters (art. 505–510, *International Letters of Application*), execution of sentences (art. 512–523).

b) Practices

While Albania ratified almost all the relevant European and international instruments for cooperation, the actual implementation is rather poor. In other words, the legal materials are quite abundant and formal implementation measures are used (adoption of procedures coherent with those of the requesting state, recognition of confiscation decisions, of decisions to prosecute and of prison sentences). Nevertheless, the Albanian legal framework for cooperation is deemed to be very rigid by practitioners, who lack the basic tools to implement those provisions.

The instrument of cooperation mostly used by Albanian prosecutors is the European Convention on Mutual Assistance in Criminal Matters and its Protocols. Less use is made of the European Convention on Extradition and its protocols and to the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. The United Nations Convention against Illicit Traffic of Drugs and Psychotropic Substances (1988) and the Criminal Law Convention against Corruption (1999 COE – ETS 173) are rarely used in the experience of the prosecutors interviewed.

Bilateral agreements are rarely used (in favour of the above-mentioned instruments of international cooperation) with the sole exception of the agreement with Greece, which is normally used when assistance is requested or needed between these two countries.

¹⁰⁰ The agreement with Montenegro was signed on 14 October 2003 and deals with cooperation in the fight against organised crime, terrorism and trafficking.

¹⁰¹ The text of the main criminal procedure provisions regulating formal assistance is available on the CD '*Legal Materials*' attached to this report.

2.5. DIRECT CHANNELS FOR POLICE AND JUDICIAL COOPERATION

a) Legislation

No agreements or legislation exists, which provides for the direct judicial cooperation of Albanian prosecutors with those of other countries. There are instead formal agreements for direct police cooperation with three SEE countries (Poland, Romania and Turkey) and with six EU countries (Denmark, France, Germany, Greece, Italy and United Kingdom). Under a specific memorandum of understanding, an Italian Interforce Police Mission has been set up and stationed in Albania, which provides extensive counselling and is actively helping to reorganise the country's police forces.¹⁰²

Albanian prosecutors, when directly contacted by colleagues of another country asking for assistance are obliged by law to forward the request for assistance to their competent colleagues, if they have not jurisdiction to implement the request. They are obliged to summon the witnesses and experts, whose testimony under oath is requested by colleagues of a foreign country. Albanian prosecutors are obliged by law to execute freezing or confiscation orders, search warrants, and to forward extracts of bank records and criminal records, when a specific request is made. Albanian prosecutors are also obliged to provide assistance regarding all the special and ordinary means of investigation available in Albania, with the exception of interceptions of telephone conversations and Internet transmissions due to the lack of technical equipment.

The situation is very similar with regards to direct cooperation and exchange of information between Albanian police officers. They are obliged by law to forward to competent colleagues the requests for assistance, which they have no jurisdiction over. Moreover, when the Albanian police gather information on a transnational organised crime ring, which could be useful to develop an investigation in another country, they are obliged by law to forward that information to the authorities of the other country. The Albanian police cannot directly send copies of bank and phone records, documents related to vehicle ownership and documents related to criminal records.

b) Practices

Albanian prosecutors enter into direct contact with the prosecutors of other countries, despite the absence of agreements/legislation for direct judicial cooperation. Direct contact with foreign counterparts is assured under the aegis of the Foreign Department of the General Prosecution Office with the following countries: Italy, Belgium, Switzerland, the United Kingdom, Greece, The Netherlands, Bulgaria, Romania and United States.

¹⁰² An Italian Interforce Police Mission has been set up and stationed in Albania. It provides extensive counselling and is actively helping to reorganise the country's police forces. The main activity of the Interforce Mission is to reinforce measures to protect Albania's territory and coasts against trafficking of drugs and persons. In this context, Italian and Albanian police forces have carried out seizures and arrests together. More detailed information on the Italian Interforce Police Mission is available at the website <http://www.stranieriinitalia.it/statistiche/rapportominintngl.html> (last verified on 25 March 2004).

Albanian police officers are not informed of the possibility of being able to cooperate with police officers of other countries even when an agreement is in place. They cannot enter into direct contact with police officers of other countries if a formal agreement is not in place.

Besides the direct contact between Albanian police officers and prosecutors, there are at least two other channels of police and judicial direct cooperation:

- Albanian liaison officers, stationed to Turkey, Greece and Italy, who cooperate in international cases by providing direct links with foreign law enforcement authorities and by helping directly in the exchange of information and statistics;
- liaison magistrates from Italy, United States, Sweden and Norway are hosted in Albanian offices. They provide direct links with foreign law enforcement authorities, help directly in the exchange of information and statistics, enhance the mutual understanding of the foreign judicial systems and sometimes carry out diplomatic activities, plus individual core work in investigations.

However no Albanian prosecutors are stationed to other countries due to economic constraints. The identification of the foreign counterparts for cooperation usually follows the channels of central authorities and normally occurs through the Foreign Department of the General Prosecution Office and the Ministry of Justice.

Few joint investigative teams or international joint customs surveillance operations are carried out by Albanian law enforcement agencies,¹⁰³ but when foreign police officers start a shadowing operation (i.e. the covert observation of the movements of a person) in their country, they can be authorised to continue it within Albanian borders in cooperation with Albanian police.

The practical possibilities for direct cooperation between Albanian prosecutors/police officers and their foreign counterparts are impaired by the following factors:

- lack of equipment, when requests for interceptions of telephone conversations and internet transmissions are requested by foreign prosecutors;
- absence of readily available translators, who can translate the official documents coming from a foreign country in answer to an assistance request.
- low level of training in investigating transnational organised crime among Albanian prosecutors, even if Albanian police officers have a medium level of training with possibilities of participating in joint seminars or specialisation courses in the field of transnational organised crime;
- partial absence of technical equipment (with a few exceptions for the General Prosecution Office), Albanian prosecutors and police officers have neither a computer network (intranet) nor official e-mail accounts available in their office).

¹⁰³ The exchange of information and cooperation in the form of joint investigative teams has recently been strengthened with the foreign police of Italy, Greece and Montenegro in the field of trafficking in human beings. See Ministry of Public Order, *Analysis On The State Police Activity In The Struggle Against Human Beings And Drug Trafficking*, available at <http://www.mpo.gov.al/2002/mars/analysis.htm> (last verified on 18 February 2004).

2.6. INTERNATIONAL AND REGIONAL ORGANISATIONS

a) Legislation

Interpol is the normal instrument used by Albanian police officers for identifying competent counterparts in foreign countries. The Albanian Interpol Office provides the police of another country with the following acts of cooperation, if requested:

- information regarding investigations of crimes committed in Albania;
- information on investigations aimed at tracing goods located in Albania, which are related to crimes committed abroad;
- information regarding Albanian criminal records;
- information related to the ownership of vehicles and regarding driving licenses issued in Albania;
- information regarding the ownership of Albanian phone numbers.

Albania has also developed different forms of cooperation with Eurojust, EJM and the SECI Center of Bucharest, where an Albanian liaison officer is stationed.

b) Practices

According to the experience of our experts, the level of cooperation between Albania and the international/European organisations relevant for police and judicial cooperation varies greatly. Europol has no cooperation at all with Albania, but Interpol, Eurojust and the EJM contribute in different ways to the fight against organised crime in Albania by cooperating and exchanging information.

In particular, while the level of cooperation of Eurojust is considered 'high' in all the areas concerned, the level of cooperation is lower with regard to Interpol, at least as far as the exchange of financial information on suspected corporate entities and exchange of liaison officers is concerned.

The following tables illustrate the level of cooperation (where 0=no cooperation, 1=low level of cooperation, 2=medium level of cooperation and 3=high level of cooperation) in the different areas in which these organisations operate. This evaluation is based on the personal judgement of the experts interviewed.

TABLE 1. DEGREE OF COOPERATION BETWEEN ALBANIA AND INTERPOL

Exchange of strategic and operational information	2
Exchange of financial information on suspected corporate entities	1
Provision of direct contacts with local law enforcement authorities	2
Provision of direct contacts with local prosecution offices	2
Exchange of information on investigative procedures and crime prevention methods	3
Training initiatives	2
Advice and support in individual investigations	2
Exchange of liaison officers	1
Participation in joint investigative teams in a support capacity	2
Participation in joint investigative teams in an operative capacity	2

TABLE 2. DEGREE OF COOPERATION BETWEEN ALBANIA AND EUROJUST

Legal advice and assistance in cross-border cases	3
Inputs to national authorities to take steps and initiate investigations	3
Direct help in the letters of rogatory	3
Provision of direct contacts with local law enforcement authorities	3
Provision of direct contacts with local prosecution offices	3
Exchange of information on investigative procedures and crime prevention methods	3
Advice and support in individual investigations	3

TABLE 3. DEGREE OF COOPERATION BETWEEN ALBANIA AND EJM

Provision of legal and practical information on mutual legal assistance	3
Provision of direct contacts with local law enforcement authorities	3
Provision of direct contacts with local prosecution offices	2
Exchange of information on investigative procedures and crime prevention methods	2
Training initiatives	2
Advice and support in individual investigations	2

3. GOOD PRACTICES

3.1. STRUCTURES SET UP FOR INTERNATIONAL COOPERATION PURPOSES

Both police officers and prosecutors normally have to channel their requests for assistance through central authorities. The Prosecutor's General Office have a department uniquely devoted to international cooperation. The Ministry of Public Order and the Interpol Office are also considered as central authorities, which can help with requests for assistance.

The above-mentioned central authorities have translators readily available for the following languages: English, Italian, French and German. The requests for assistance are sent by mail, fax and even e-mail.

A national standard form exists which is used by prosecutors in order to ask for international assistance.

The time necessary to get an reply to an assistance request from the Prosecutor General's Office is however rather long (from up to 1 month to more than two months). This is a factor that greatly impairs the possibilities of cooperation through national centralised authorities.

3.2. DATABASES ON ORGANISED CRIME

No common criminal databases have been established to share the OC information collected in Albania with foreign counterpart colleagues.

Furthermore, even if there is a national centralised database, which contains information about persons *wanted* for participating in OC groups, a foreign police officer cannot access the information contained in the database.

As to information related to persons *convicted* for participating in organised criminal groups, they have not yet been collected in a national centralised database.

3.3. *MODI OPERANDI*/METHODS IN THE INTERNATIONAL COOPERATION PROCESS

Albania has enacted the following *modi operandi*/methods in order to speed up the international cooperation process:

- acknowledgement of all requests and written enquiries concerning the execution of requests;
- providing the requesting authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing the request;
- setting a priority for requests which have been clearly marked 'urgent` by the requesting authority;
- giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authority how the difficulty might be overcome;

- explaining when the assistance requested is likely to be provided;
- explaining the reasons for the urgency or deadline;
- ensuring that requests are submitted in compliance with the relevant treaty or other international arrangements;
- providing the requested authorities with the name and contact details, including telephone and fax numbers, of the authority and, if possible, the person responsible for issuing the request;
- compliance with the formalities and procedures expressly indicated by the requesting member state;
- direct sending of procedural documents;
- spontaneous exchange of information;
- joint operational meetings;
- direct channels of communication.

However one good practice that still needs to be established in Albania is that of interagency coordination protocols. The experience of the countries that have adopted these protocols (France and Finland, for instance),¹⁰⁴ show that they facilitate a climate of cooperation and the sharing of data between the various national agencies involved in the cooperation process (e.g. police, judiciary, customs, frontier guard, and so on), which is essential for having a complete picture of OC for a given country to communicate to the foreign counterparts.

4. EMERGING OBSTACLES

The analysis of legislation, practices and good practices relevant for international cooperation against organized crime has highlighted some shortcomings that are reported here for the sake of clarity, as they represent the background and rationale for the recommendations included in paragraph 5.

4.1. OBSTACLES IN LEGISLATION

1) The lack of criminal provisions on the liability of legal persons

After the abrogation of art. 45 of the Criminal Code (*Criminal sanctions for juridical/legal persons*) by Law n. 8733 of 24.01.2001, there is a lack of provisions on the liability of legal persons in Albania. At the moment there is only a draft law, which is due to be enacted in May 2004.

This legal gap might be an obstacle in international investigations regarding corporations charged with carrying out or facilitating TOC activities, because

¹⁰⁴ Council of Europe, *Cross Border Cooperation in the Combating of Organised Crime*, Strasbourg, January 2003, p. 21.

Albanian law enforcement agencies cannot directly incriminate them in criminal activities. This legal shortcoming is even more serious in the view of the high level of infiltration of organised criminals in legitimate activities and the exploitation of these covers to carry out crimes. In fact, in Albania, OC seems to be able to infiltrate practically all the legal sectors (e.g. real estate, nightlife services, etc.).

2) The lack of distinction between trafficking in human beings and facilitation of illegal border crossing.

The definition of trafficking in persons contained in the new art. 110/a CC does not follow the internationally recognized definition given in art. 3 b) of the UN Protocol, because it does not make a clear distinction between trafficking in human beings and cases of voluntary illegal immigration. This may ultimately lead to different readings of the same norm, thus causing difficulties in the cooperation process with the countries that have enacted the UN Protocol.

3) The problems in the confiscation regime

The Albanian confiscation regime is not mandatory, but only discretionary. Moreover, it is not possible to put the *onus probandi* on the defendant in order to show the legal origin of his/her assets, but it is always up to the prosecutor to prove this. These two aspects weaken confiscation provisions in Albania and might be an obstacle in carrying out international cooperation regarding confiscation orders.

4) The gaps in the data protection system

Despite the enactment of recent legislation on data protection, Albania has not yet ratified the 1981 COE Convention and relative data protection provisions. Furthermore, it has not concluded bilateral or multilateral agreements (not even with Europol) within the framework of police and judicial cooperation containing provisions to protect personal data. The absence of such legal instruments obstructs police and judicial cooperation with the countries that have enacted a data protection regime and are party to the 1981 COE Convention.

5) The lack of legal possibilities to directly exchanging certain types of records

Albanian police officers cannot directly send bank or phone records and documents related to criminal records or to vehicle ownership, even if requested by a foreign counterpart colleague. This lack of direct exchange of data may slow the cooperation process.

4.2. OBSTACLES IN PRACTICES

6) The inadequate use of bilateral instruments of cooperation

Despite the ratification of all the main instruments of cooperation and the existence of bilateral agreements with all neighbouring countries, the frequency of use of these instruments is not always consistent. In particular, almost all the bilateral agreements are rarely used. Nevertheless, these instruments could be profitably deployed to achieve a higher level of cooperation than that possible only with multilateral instruments. The latter, in fact, cannot go into details regarding definitions and protocols, whereas bilateral instruments seem more suitable for these purposes.

7) The low level of training of prosecutors in investigating TOC cases

The level of training of prosecutors in investigating TOC cases is rated low. This lack of knowledge impedes the common use of some channels for the exchange of information and cooperation.

8) The lack of technological means

Most of the Albanian police officers do not have a computer network (intranet) or an official email account. This lack of technological means slows down the process of cooperation and exchange of information. The situation for Albanian prosecutors is better only as far as the Prosecutor General's Office is concerned.

9) The lack of use of direct cooperation channels

Albania does not station liaison magistrates abroad. Police officers do not enter into contact with foreign colleagues if a formal agreement is not in place. Moreover they are not informed of the possibilities of direct cooperation. Joint investigative teams and international joint customs surveillance operations cannot thus express their usefulness in smoothing the process of cooperation.

10) The lack of cooperation with Europol

Albania has not yet concluded any agreement for cooperation with Europol and there is no cooperation with this institution. This might greatly impair investigative possibilities at least as far as trafficking routes into the European Union member states are concerned.

4.3. OBSTACLES IN GOOD PRACTICES

11) The lengthiness of assistance procedures through central authorities

It takes more than two months to get an answer to an assistance request made through central authorities. This might be due to the fact that direct channels of cooperation are not fully exploited in Albania. The lengthiness of the procedure is a deficiency that greatly impairs law enforcement and prosecution offices activities, which often need a prompt input to conduct effective investigations.

12) The absence of common criminal databases

No common criminal database has yet been established in Albania on OC. In fact, even though there is a national centralised database, which contains information about persons wanted for participating in organised criminal groups, a foreign police officer cannot access the information contained in the database. As to information related to persons convicted for participating in organised criminal groups, they have not yet been collected in a national centralised database.

The absence of such instruments impedes a rapid exchange of information with foreign colleagues on people wanted/convicted for participating in OC groups.

13) The absence of interagency coordination protocols

In Albania there are no interagency coordination protocols. The experience of the countries that have adopted these protocols (France and Finland, for instance), show that they facilitate a climate of cooperation and the sharing of data among the

different national agencies involved in the cooperation process (e.g. police, judiciary, customs, frontier guard, and so on), which is essential for having a complete picture of OC in a given country to communicate to the foreign counterparts.

4.4. OTHER OBSTACLES MENTIONED BY THE EXPERTS

14) Obstacles to investigating organised crime

The experts interviewed mentioned the following as the most significant obstacles to investigating organised criminal groups:

- lack of legislation (in particular, the absence of a witness protection program);
- inadequate follow-up of investigative techniques;
- lack of a multidisciplinary approach; i.e. cooperation between officers with different skills in the development of organised crime investigations;
- use, by organised criminal groups of dummies, i.e. people of apparent, but no real power over the criminal member's assets;
- lack of material resources within the offices participating in organised crime investigations;
- high turnover of specialised personnel participating in organised crime investigations.

15) Obstacles to police assistance

The experts interviewed mentioned the following as the most significant obstacles to *police assistance* received by Albania from other countries in pre-trial investigations into transnational organised crime:

- difficulty in identifying the foreign competent counterpart;
- language problems;
- lack of financial resources;
- lack of training;
- high turnover of personnel in the police forces.

16) Obstacles to judicial assistance

The experts interviewed mentioned the following as the most significant obstacles to *judicial assistance* received by Albania from other countries in pre-trial investigations into transnational organised crime:

- lack of response to requests for assistance;
- delay of response to requests for assistance;
- lack of harmonisation in legislation;

- language problems;
- lack of financial resources;
- lack of training.

5. RECOMMENDATIONS

5.1. RECOMMENDATIONS ON LEGISLATION

Recommendation n. 1

'Establishing liability of legal persons for OC activities'

Background and rationale

After the abrogation of art. 45 of the Criminal Code (*Criminal sanctions for juridical/legal persons*) by Law n. 8733 of 24.01.2001, the main gap in the Albanian legislation against organized crime appears to be related to the lack of provisions on the liability of legal persons. At the moment there is only a draft law, which is due to be enacted in May 2004. This legal gap might be an obstacle in international investigations regarding corporations charged with carrying out/facilitating TOC activities, because Albanian law enforcement agencies cannot directly incriminate them in criminal activities. The lack of corporate liability is even more serious in the view of the high level of infiltration of organised criminals in legitimate activities and the exploitation of these covers to carry out criminal deeds. In fact, in Albania, OC seems to be able to infiltrate practically all the legal sectors (e.g. real estate, nightlife services, ...).

Recommendation

Action might be taken to enact provisions dealing with the responsibility of legal persons.

Implementing measures

- Albanian legislators should include in the criminal code or in the special legislation against organised crime provisions on liability of legal persons engaging in organised crime activities.
- The draft law on the criminal liability of legal entities in corruptive actions, due to be enacted in May 2004, should enter into force.
- As an alternative, a form of administrative liability for legal persons should be sought in order to make legal persons accountable for their participation in organised crime activities.

Recommendation n. 2

'Improving trafficking in persons criminal definition'

Background and rationale

The definition of trafficking in persons contained in the new art. 110/a CC does not follow the internationally recognized definition given in art. 3 b) of the UN Protocol, because it does not make a clear distinction between trafficking in human beings and cases of voluntary illegal immigration. This may ultimately lead to different readings of the same norm, thus causing difficulties in the cooperation process with the countries that have enacted the UN Protocol.

Recommendation

Action should be taken to correct the criminal definition of trafficking in persons and bring it up to the UN standards.

Implementing measures

Albania should reformulate the criminal definition of trafficking in persons contained in the new art. 110/a CC taking into account the above mentioned gaps in the current definition.

Recommendation n. 3

'Improving the confiscation regime'

Background and rationale

The Albanian confiscation regime is not mandatory, but only discretionary. Moreover, it is not possible to put the *onus probandi* on the defendant in order to show the legal origin of his/her assets, but it is always up to the prosecutor to prove this. These two aspects weaken confiscation provisions in Albania and might be an obstacle to international cooperation regarding confiscation orders.

Recommendation

Action should be taken to improve the confiscation regime.

Implementing measures

Albanian legislators should enact provisions making confiscation compulsory, at least in OC cases, easing the burden of proof of the prosecutors.

Recommendation n. 4

'Implementing an effective data protection system'

Background and rationale

Despite the enactment of recent legislation on data protection, Albania has not yet ratified the 1981 COE Convention and relative data protection provisions. Furthermore, it has not concluded bilateral or multilateral agreements (not even with Europol) within the framework of police and judicial cooperation containing provisions to protect personal data.

The absence of such legal instruments obstructs police and judicial cooperation with the countries that have enacted a data protection regime and are party to the 1981 COE Convention.

Recommendation

Action should be taken to implement an effective data protection system in Albania.

Implementing measures

Albania should ratify the 1981 COE Convention and conclude multilateral agreements on this issue. In particular, Albania should reach an agreement with Europol. This would enable Albanian law enforcement agencies and prosecution offices to legally exchange personal data with all their foreign counterpart colleagues in the region and also with EU Member States.

Recommendation n. 5

'Expanding legal possibilities to directly exchanging data'

Background and rationale

Albanian police officers cannot directly send bank or phone records and documents related to criminal records or to vehicle ownership, even if requested by a foreign counterpart colleague. This lack of direct exchange of data may slow the cooperation process.

Recommendation

Action should be taken to expand the legal possibilities to directly exchange bank or phone records and documents related to criminal records or to vehicle ownership.

Implementing measures

Legislation should be enacted allowing police officers to directly exchange of bank or phone records and documents related to criminal records or to vehicle ownership in the respect of data protection regulations.

5.2. RECOMMENDATIONS ON PRACTICES

Recommendation n. 6

'Promoting the use of bilateral agreements'

Background and rationale

Despite the ratification of all the main instruments of cooperation and the existence of bilateral agreements with all neighbouring countries, the frequency of use of these instruments is not always consistent. In particular, the protocols of the 1957 COE Convention are rarely used as is the case with almost all the bilateral agreements. Nevertheless, these instruments could be profitably deployed to achieve a higher level of cooperation than that possible with multilateral instruments. The latter, in fact, cannot go into details regarding definitions and protocols, whereas bilateral instruments seem more suitable for these purposes.

Recommendation

Action should be taken to promote the use of multilateral and bilateral agreements.

Implementing measures

- Training should be given on the legal possibilities for multilateral and bilateral cooperation to all the police officers and prosecutors that are likely to be involved in the process of cooperation.
- A manual could also be drafted and disseminated, which includes all the legal instruments of cooperation available to police officers and public prosecutors in Albania.

Recommendation n. 7

'Improving the level of training of prosecutors in investigating TOC cases'

Background and rationale

The level of training of prosecutors in investigating TOC cases is rated low. This lack of knowledge impedes the common use of several channels for the exchange of information and cooperation.

Recommendation

Action might be taken to improve the knowledge of international and regional cooperation possibilities and of new powers and competences of prosecutors.

Implementing measures

Training should be given to young police officers in Albanian police schools about international and regional cooperation.

Recommendation n. 8

'Improving technological equipment available to police officers/prosecutors'

Background and rationale

Most of the Albanian police officers do not have a computer network (intranet) or an official email account. This lack of technological means slows down the process of cooperation and exchange of information. The situation for Albanian prosecutors is better only as far as the Prosecutor General's Office is concerned.

Recommendation

Action should be taken to improve the technological equipment available to police officers/prosecutors.

Implementing measures

Albania should furnish police officers/prosecutors involved in TOC cases with adequate technological equipment starting from the very basic tools for a speedy communication between long distant colleagues, such as computer networks and official email accounts.

Recommendation n. 9

'Enhancing the use of direct channels of cooperation'

Background and rationale

Albania does not station liaison magistrates abroad. Police officers do not enter into contact with foreign colleagues if a formal agreement is not in place. Moreover they are not informed of the possibilities of direct cooperation. Joint investigative teams and international joint customs surveillance operations cannot thus express their usefulness in smoothing the process of cooperation.

Recommendation

Action should be taken to station Albanian liaison magistrates abroad and to enhance the use direct channels of cooperation such as joint investigative teams and international joint customs surveillance operations.

Implementing measures

- There should be Albanian liaison magistrates at least in the countries where there are more TOC connections with Albania, or in the organisations devoted to international cooperation.
- Joint investigative teams and international joint customs surveillance operations should be carried out on a regular basis when dealing with TOC cases.
- There should be more information on the possibilities of directly cooperate with foreign colleagues in TOC cases.

Recommendation n. 10

'Promoting cooperation with international and regional organisations'

Background and rationale

Albania has not yet concluded any agreement for cooperation with Europol and there is no cooperation with this institution. This might greatly impair investigative possibilities at least as far as trafficking routes into the European Union member states are concerned.

Recommendation

Action should be taken to promote cooperation with Europol

Implementing measures

An agreement should be reached with Europol in order to establish an Albanian liaison officer at Europol and a protocol of cooperation.

5.3. RECOMMENDATIONS ON GOOD PRACTICES

Recommendation n. 11

'Speeding up cooperation through central authorities'

Background and rationale

It takes more than two months to get an answer to an assistance request made through central authorities. This might be due to the fact that direct channels of cooperation are not fully exploited in Albania. The lengthiness of the procedure is a deficiency that greatly impairs law enforcement and prosecution offices activities, which often need a prompt input to conduct effective investigations.

Recommendation

Action should be taken to speed up the process of cooperation through central authorities.

Implementing measures

Albanian prosecutors and police officers involved in TOC cases should also try to use direct channels of cooperation. The use of these alternative routes may relieve central authorities of a certain amount of work, thus speeding up the cooperation process.

Recommendation n. 12**'Establishing common criminal databases and improving national ones'***Background and rationale*

No *common* criminal database has yet been established in Albania on OC. In fact, although there is a national centralised database, which contains information about persons wanted for participating in organised criminal groups, a foreign police officer cannot access the information contained in the database. As to information related to persons convicted for participating in organised criminal groups, they have not yet been collected in a national centralised database.

The absence of such instruments impedes the rapid exchange of information with foreign colleagues on people wanted/convicted for participating in OC groups.

Recommendation

Action should be taken to establish common criminal databases and improve national ones.

Implementing measures

- the existing national centralised database, which contains information about persons wanted for participating in organised criminal groups, should be made accessible to foreign police officers and prosecutors;
- a national centralised database, which contains information about persons convicted for participating in organised criminal groups, should be established and made accessible to foreign police officers and prosecutors.

Recommendation n. 13**'Setting up interagency coordination protocols'***Background and rationale*

In Albania there are no interagency coordination protocols between the different agencies dealing with OC cases. In the countries where such structures exist, they have been proven to facilitate a climate of cooperation and the sharing of data among the different national agencies involved in the cooperation process (e.g. police, judiciary, customs, frontier guards, and so on), which is essential for having a complete picture of OC in a given country to communicate to the foreign counterparts.

Recommendation

Action should be taken to set up interagency coordination protocols.

Implementing measures

A structure should be established where all Albanian agencies dealing with OC cases can work together ('under the same roof') and share their information on OC. This structure should also be used to communicate and exchange information with similar foreign structures or other foreign colleagues seeking information on OC in Albania.

5.4. OTHER RECOMMENDATIONS FROM THE EXPERTS

Recommendation n. 14

'Enhancing police powers in investigating OC'

Background and rationale

Albanian police officers suffer various limitations in investigating organised crime.

Recommendation

Action should be taken to enhance police powers in investigating organised crime.

Implementing measures

As the experts interviewed suggested, some steps to improve investigations into organised crime include:

- closer cooperation between the police and the prosecutor offices;
- a reinforced role for the judicial police;
- the development of tools to combat corruption;
- more powers in investigations against VIPs.

8.2.

BOSNIA AND HERZEGOVINA¹⁰⁵

INTRODUCTION

The state structure of Bosnia and Herzegovina (BiH) is very complex. Since the 1995 Dayton Peace Agreement BiH is a state comprising two entities: Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH), with their own Ministry of Interior and responsibility for combating organized crime. Furthermore, the international community has a strong influence on the territory through the Office of the High Representative.

Recent reforms have deeply changed the governmental structure of BiH. Since January 2004, BiH has formed a new central state government, which has some new powers, previously held by RS and FBiH. Among them two new centralized ministries (Ministry of Security and Ministry for Justice) have been added to the previous responsibilities.¹⁰⁶

These changes have also had a profound impact on the organization of police and judicial services.¹⁰⁷ The new Ministry of Security will cover and coordinate the activities of all police agencies in Bosnia and Herzegovina, be responsible for combating organized crime, terrorism and trafficking in human beings,¹⁰⁸ and be the central authority for international cooperation.

Inside this new Ministry there are two state agencies: the State Border Service and the State Agency for Protection and Information (SIPA). SIPA is supposed to play a key role in the fight against organized crime in Bosnia and Herzegovina, as it has three specific missions: to protect BiH public institutions and foreign diplomatic presence, to protect VIPs employed by the state or members of foreign diplomatic missions and, most notably, to collect data on criminal offences under the

¹⁰⁵ The BiH country profile was based, amongst other materials, on the answers given by one expert (Mr. Dusko Kovacevic, Liaison Officer for Bosnia-Herzegovina, SECI Center for Combating Transborder Crime, Bucharest). The questionnaires to prosecutors could not be sent to an expert due to difficulties in identifying a counterpart. This country profile therefore only contains partial information on judicial cooperation in Bosnia and Herzegovina.

¹⁰⁶ 'The New Shape of the Bosnian Government', 22 January 2004, article available at <http://www.legislationline.org/index.php?country=8&org=0&eu=0> (last verified on 29 January 2004).

¹⁰⁷ Before the creation of the state Ministry of Security, the responsibilities for organised crime were distributed between the following agencies: State Border Service-Central Investigative Office, Ministry of Interior of RS-Criminal Police Department, Federal Ministry of Interior- Criminal Police Department, Police District of Brčko, Ministry of Finance of the RS-Department for combating money laundering, Financial Police of the FbiH-Department for combating money laundering.

¹⁰⁸ Another police agency, named the Strike Group, is currently specifically responsible for the fight against trafficking in human beings.

jurisdiction of the State. For the time being, only the top management has been recruited. The selection of the middle level is still ongoing.¹⁰⁹

On 16 January 2004, the High Judicial and Prosecutors Council (HJPC) nominated eight judges to the new Supreme Court, known as the Court of Bosnia–Herzegovina. The HJPC also established a Bosnian Prosecutor’s Office. The two bodies are considered as central to the overall reform of the judiciary. On 27 January 2004, the state Court and Prosecutor’s Office formally commenced their activities in Sarajevo.

The criminal law and procedure framework of BiH has also undergone radical changes. A new Criminal Code and a new Criminal Procedural Code were enacted by the Office of the High Representative of Bosnia and Herzegovina on 24 January 2003, and entered into force on 1 March 2003.¹¹⁰ The criminal codes and criminal procedure codes of the two Entities will have to harmonize their provisions to these new pieces of legislation.

The envisaged problem with this reform is the absence of any change to the constitution supporting the changes at a state level. It is unclear whether the Entities will harmonize their codes in order to make them fit with the new provisions and problems of jurisdiction may arise.

The new criminal procedure is characterized mostly by elements belonging to the accusatorial tradition: criminal proceedings may only be initiated and conducted on the request of the Prosecutor (art. 16 CCP, *Accusatory principle*), the Court. The Prosecutor and other bodies participating in the proceedings are bound to objectively study and establish with equal attention facts that are exculpatory as well as inculpatory for the suspect or the accused (art. 14 CCP, *Equality of arms*). A person shall be considered innocent of a crime until guilt has been established by a final verdict (art. 3, section 1, CCP, *Presumption of innocence and in dubio pro reo*). Other elements of the accusatorial tradition are: publicity of the trial (art. 234 CCP), cross examination (art. 262 CCP) and plea bargaining (art. 231 CCP). However there are also elements belonging to the continental tradition, and namely the presence of a preliminary proceeding judge, and a preliminary hearing judge.

¹⁰⁹ A new Department for Money Laundering Prevention will be also located in SIPA according to the draft law on money laundering, which is about to be approved at a state level by the House of Parliament of BiH.

¹¹⁰ Before the enactment of the new criminal code and criminal procedure code, the criminal law and criminal procedure law provisions greatly varied not only between the two entities (SR and F BiH), but also with the Brčko District, a separate entity with its own court system, criminal law and procedure. While the first two entities had a model of criminal procedure largely dependent on the previous inquisitorial tradition, the Brčko District had enacted an accusatorial system with some continental elements. These differences and asymmetries in the context of a single State used to cause difficult problems of interpretation and obstacles to the fight against crime. The enactment of a unified legal framework is thus a noteworthy achievement for BiH. Detailed information on the previous system can be found in B. Pavišić and D. Bertaccini, *Le altre procedure penali. Transizioni dei sistemi processuali penali*, cit., p.33–118.

1. THE ORGANISED CRIME SITUATION

1.1. FEATURES OF THE ORGANISED CRIMINAL GROUPS

There are between 1 and 10 groups operating in BiH with an average of 3–10 members, who are mainly a mix of nationals and non-nationals. The internal situation of organised crime can be defined as being structured in the form of local networks and to carry out projects rather than as a strict pyramidal hierarchy. This means that organised criminal groups in the country are characterised by great flexibility and that it is possible that members adhere to a certain criminal group only for the commission of certain criminal operations and then detach themselves from the organisation.

This seems particularly true for the groups whose main criminal activities consist in the smuggling of goods for the black market (mainly tobacco and liquor) and trafficking offences.¹¹¹ Groups dealing in these activities seem to have their origins in the Yugoslavian conflict and were formed as an attempt to overcome the UN embargo imposed on the countries participating in the conflict.¹¹²

Groups made up exclusively by non-nationals are active on the territory. They manage some criminal activities, in agreement with local groups. One example is Turkish groups.¹¹³

Growing evidence also exists of links between Bosnian organised criminal groups and Albanian, Serbian and Montenegrin, Croatian, Russian, Italian, German¹¹⁴ and Slovenian organisations.

A British source estimates that Bosnian organised crime obtains an average of Euro 266,536,116 a year from criminal activities, mainly due to custom officer corruption.¹¹⁵ Widespread corruption at Bosnian crossing points allows criminals to commit crimes on an international scale and run a minimum risk of being arrested and incriminated. Criminal leaders also threaten police officers, judges, lawyers and even witnesses to avoid being incriminated, prosecuted and sentenced for their offences.¹¹⁶

¹¹¹ R. Huremagić, *Intelligence led policing in Bosnia and Herzegovina. The Issues for Debate*, available at: <http://www.10iacc.org/download/w1-04.pdf> (last verified on 25 March 2004).

¹¹² General Accounting Office (GAO), *Bosnia. Crime and Corruption Threaten Successful Implementation of the Dayton Peace Agreement*, 19 July 2000, Washington, DC, available at: <http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPAddress=162.140.64.21&filename=ns00219t.pdf&directory=/diskb/wais/data/gao>

¹¹³ 'Sex, Drugs and Illegal Migrants: Sarajevo's Export trade to Britain', in *The Independent*, 22 January 2002, available at: <http://www.balkanpeace.org/hed/archive/jan02/hed4591.shtml> (last verified on 25 March 2004).

¹¹⁴ U.S. Department of State, *International Narcotics Control Strategy 2003*, March 2004, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2003/vol1/html/29838.htm> (last verified on 25 March 2004).

¹¹⁵ 'Sex, Drugs and Illegal Migrants: Sarajevo's Export trade to Britain', cit.

¹¹⁶ GAO, *Bosnia. Crime and Corruption Threaten Successful Implementation of the Dayton Peace Agreement*, cit.

1.2. ACTIVITIES OF THE ORGANISED CRIMINAL GROUPS

As far as **narcotics trafficking** is concerned, Bosnia and Herzegovina is strategically placed on the historic Balkan route, which is the one that is mainly exploited to traffic heroin originating in Asia to Western markets. For this reason it has also become a place of storage of this kind of drug. Heroin comes from Montenegro and it is stored in Bosnia before being transported to Western Europe for distribution.¹¹⁷ Sometimes drug trafficking also takes place with the 'acceptance', if not actual collusion, of customs officials. There is credible evidence that some Bosnian drug barons are linked to public officials.¹¹⁸

Cocaine trafficking seems to be less prevalent than the heroin, although local law enforcement authorities have detected several kilograms that originated in Panama.¹¹⁹ Total cocaine seizures in the country in 2000 amounted to 164 kg.¹²⁰ Recent reports state that cocaine arrives mainly from the Netherlands through the postal system.¹²¹

In addition to being a hub for the transit of heroin and cocaine, the country is also a transit point for other kinds of drugs. Marijuana trafficking has become a concern for law enforcement authorities. Bosnian organised crime allegedly deals with transporting the drug from Croatia to Montenegro. This is corroborated by the fact that as of October 2003 the number of drug arrests in RS has increased by 50% compared to 2002 levels; 215 kilograms of marijuana and 3,893 grams of heroin were seized (+150% and +80% compared to 2002). In 2003, large quantities of precursors made by fictitious BiH companies were imported and exported and ecstasy pills of BiH origin were found in Austria.¹²²

In the recent years Bosnia and Herzegovina has developed a small but growing internal market for both heroin and metamphetamines.¹²³ The consumption of these substances is becoming endemic and first contact with them are made at a very early age (11–12 year old children).¹²⁴

The organised crime groups that have been involved in drug trafficking seem to be turning increasingly towards **human trafficking** because of the greater profits to be

¹¹⁷ U.S. Department of State, *International Narcotics Control Strategy 2003*, March 2004, cit.

¹¹⁸ General Accounting Office (GAO), Bosnia. Crime and Corruption Threaten Successful Implementation of the Dayton Peace Agreement, cit.

¹¹⁹ R. Huremagić, *Intelligence led policing in Bosnia and Herzegovina. The Issues for Debate*, cit.

¹²⁰ Office for Drug Control and Crime Prevention (ODCCP), *Global Illicit Drug Trends*, United Nations, New York, 2002, p. 121.

¹²¹ U.S. Department of State, *International Narcotics Control Strategy 2003*, March 2004, cit.

¹²² Ibidem.

¹²³ Ibidem.

¹²⁴ Commission of the European Communities, *Bosnia and Herzegovina. Stabilization and Association Report 2003*, Commission Staff Working Paper, Brussels, 26 March 2003, p. 29, available at: http://europe.eu.int/comm/external_relations/see/sap/rep2/com03_340_en.pdf (last verified on 25 March 2004).

made.¹²⁵ Bosnia and Herzegovina is a transit point for human beings trafficked to Western European countries. In fact, a large number of illegal immigrants move from Bosnia and Herzegovina into Europe and in some cases victims are trafficked on to North America. The nationalities of the people being victimised by Bosnian criminals are mainly Iranian, Turk, Iraqi and Afghan. Trafficking from the country of origin to the countries of destination is mainly organised together with Turkish organised criminal groups¹²⁶, some exponents of which are also present on Bosnian soil. Kurds are trafficked, although to a minor extent, jointly with Montenegrin criminal organisations. Many of the people, although they had already entered into contact with the traffickers in their country of origin, arrive in Bosnia and Herzegovina legally because of lax Bosnian visa policies. Bosnia and Herzegovina is used in these cases as the starting point of their illegal journey.¹²⁷

Bosnia is also reported as being the primary South Eastern European country of destination for women and girls trafficked from Moldova, Romania and Ukraine and to a lesser extent, Russia, Belarus, Kazakhstan and the Federal Republic of Yugoslavia.¹²⁸ The main routes into Bosnia are through Serbia.¹²⁹ The junction of the trafficking is the town of Brcko.¹³⁰ The number of prostitutes active in BiH is controversial, as it appears to range from 1,000 to 15,000 units.¹³¹ After being lured through promises of work as barmaids, dancers and housekeepers, the women and girls trafficked to Bosnia and Herzegovina are forced to work as prostitutes in the nightclubs situated in the country.¹³² This occurs because of the existence of agreements between the traffickers and the owners of the nightclubs

¹²⁵ T. Robson, *Bosnia: the United Nations, Human Trafficking and Prostitution*, 21 August 2002, available at: <http://www.wsws.org/articles/2002/aug2002/bosn-a21.shtml> (last verified on 25 March 2004).

¹²⁶ 'Sex, Drugs and Illegal Migrants: Sarajevo's Export to Britain', *cit.* at footnote 113.

¹²⁷ United Nations Mission in Bosnia and Herzegovina, *Speech Delivered on the Occasion of the Inauguration of the State Border Service Unit*, 31 July 2000, available at the site of the UNMIBH: <http://www.unmibh.org> (last verified on 25 March 2004).

¹²⁸ U.S. Department of State, *Trafficking in Persons 2003*, 11 June 2003, available at: <http://www.state.gov/g/tip/rls/tiprpt/2003/21275.htm#bosnia> (last verified on 25 March 2004). See also IOM/Stability Pact for South Eastern Europe/ICMC, *Regional Clearing Point Report 2003*, *cit.*, p. 115; Human Rights Watch, *Bosnia and Herzegovina. Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution*, vol. 14, n. 9, November 2002, available at: <http://hrw.org/reports/2002/bosnia> (last verified on 25 March 2004).

¹²⁹ UNICEF, *Trafficking in Human Beings in South Eastern Europe. An Inventory of the Current Situation and of Responses to trafficking in Human Beings in Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Federal Republic of Macedonia*, UNICEF, 15 August 2000.

¹³⁰ M. Hajdinjak, *Smuggling in Southeast Europe*, CSD Report, Sofia, 2003. p. 54.

¹³¹ The number of prostitutes active in the country is around 15,000 according to M. Lehti, *Trafficking in women and Children in Europe*, HEUNI Paper n. 18, Helsinki 2003, p. 23, available at: <http://www.heuni.fi/uploads/to30c6cjxyah11.pdf> (last verified on 25 March 2004). According to prosecution office data the number is radically lower: 1,000. On the seriousness of the trafficking problem in BiH see also European Bank for Reconstruction and Development, *Strategy for Bosnia and Herzegovina*, 29 April 2003, p. 12, available at: <http://www.ebrd.com/about/strategy/country/bosnherz/bosnia.pdf> (last verified on 25 March 2004).

¹³² B. Limanowska, *Trafficking in Human Beings in Southeastern Europe*, UNICEF, 2002. See also UNICEF/UNOHCHR/OSCE – ODIHR, *Trafficking in Human Beings in South Eastern Europe*, UNICEF, 2002, p. 105–122, available at: <http://www.unhchr.ch/women/trafficking.pdf> (last verified on 25 March 2004).

and bars.¹³³ According to recent sources, however, since 2002 there has been a steady decrease in the number of nightclubs.¹³⁴ In fact, according to police sources, a new *modus operandi* is currently replacing these venues with 'closed' apartments where the prostitutes receive clients.

In March 2001, local police in collaboration with UN forces raided 38 public places that were suspected of exploiting foreign girls by obliging them to work as prostitutes. In just that one operation, 177 women from Romania, Moldova, the Federal Republic of Yugoslavia, the Russian Federation, Ukraine, Croatia and local girls were rescued.¹³⁵ Local police subsequently made other 359 raids on suspected establishments¹³⁶ but corrupt police officers reduced the efficiency of those operations: some owners of bars/night clubs knew about the raids in advance and others had charges dismissed.¹³⁷

The collusion of police officers in trafficking in women and children has been verified in a number of cases, even if it should be emphasised that, according to recent police sources, this situation has radically changed over the last 2–3 years.¹³⁸ The International Crisis Group was told of cases where Romanian women destined for Bosnian brothels were ferried across the river from Serbia with the assistance of RS police officers. The women had been provided with documents, work permits and visas by their traffickers. All this suggests the complicity of government officials in organising this trade.¹³⁹ In addition, the number of effective prosecutions of traffickers is very low as it is in the rest of South Eastern Europe, representing one of the weakest points of anti-trafficking efforts.¹⁴⁰ This is also confirmed by

¹³³ UNICEF, *Trafficking in Human Beings in South Eastern Europe. An Inventory of the Current Situation and of Responses to trafficking in Human Beings in Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Federal Republic of Macedonia*, cit.

¹³⁴ B. Limanowska, *Trafficking in Human Beings in Southeastern Europe*, cit.

¹³⁵ 177 Victims of Human Trafficking Rescued in Bosnia and Herzegovina', in *Europaworld*, 6 March 2001, available at: <http://www.europaworld.org/issue25/177victimssofhumantrafficking9301.htm> (last verified on 26 March 2004). A UNICEF/UNOHCHR/OSCE – ODIHR report states that since 1999, the International Organisation for Migration, the organisation charged with sheltering the women rescued from forced prostitution, assisted 440 women, who mainly came from Ukraine, Belarus, Russia, FRY, Kazakhstan and Hungary. UNICEF/UNOHCHR/OSCE – ODIHR, *Trafficking in Human Beings in South Eastern Europe*, cit., p. 64.

¹³⁶ U.S. Department of State, *Trafficking in Persons 2003*, cit., p. 32.

¹³⁷ Up to 2002, there have only been 11 successful prosecutions of traffickers in Bosnia and Herzegovina. In 2001 only one person was convicted and sentenced to 3 years in prison for trafficking girls for prostitution purposes, one to 2 years and 4 months for the same crime and one to 1 year and 3 months. A few others were given lower sentences. UNICEF/UNOHCHR/OSCE – ODIHR, *Trafficking in Human Beings in South Eastern Europe*, cit., p. 67.

¹³⁸ Commission of the European Communities, *Bosnia and Herzegovina. Stabilization and Association Report 2003*, cit.

¹³⁹ International Crisis group (ICG), 'Policing the Police in Bosnia', in *Balkans Report*, n. 130, Sarajevo/Brussels, 10 May 2002, available at: http://www.crisisweb.org/library/documents/report_archive/A400644_10052002.pdf (last verified on 26 march 2004).

¹⁴⁰ Kelly L., 'Journeys of Jeopardy: A Commentary on Current Research on Trafficking of Women and Children for Sexual Exploitation Within Europe', paper commissioned for the *EU/IOM European Conference on Preventing and Combating Trafficking in Human Beings: A Global Challenge for the 21st Century*, 18–20 September 2002, available at: <http://www.belgium.iom.int/STOPConference/Conference%20Papers/10.%20Liz%20Kelly%20IOM%20STOP%20Conference.pdf> (last verified on 26 March 2004).

UNICEF sources regarding trafficking in Bosnia and Herzegovina, according to which the number of successful prosecutions is very low.¹⁴¹

There are several reasons for the high demand for prostitution in BiH. In the past some NGOs, academic papers and even the European Union Police Mission pointed out that a large portion of the clients are foreigners (soldiers from SFOR and personnel of the international peacekeeping forces), who pay higher rates to prostitutes and spend more money in bars than local people.¹⁴² This situation has begun to change with the reduction of staff of international organisations and armed forces in BiH (e.g. passing from 76,000 SFOR soldiers present in BiH in 1996 to 12,000 in 2003). However, the internal market is not decreasing because local men are taking the place of international clients.¹⁴³

Bosnian organised crime is also involved in the profitable business of **trafficking in arms**. As mentioned above, the origins of many of the organised criminal groups operating in Bosnia and Herzegovina can be traced back to the Yugoslavian conflict. Bosnia and Herzegovina is an origin country in this regard. One of the activities these organised criminal groups have undertaken is the movement of arms to destinations other than the post-war area. According to a 2001 Saferworld report quoting official sources: '*Bosnia is now one of the main jumping off points for importing arms, drugs and illegal immigrants into Europe and RS army officials are running a major arms export business with weapons left over from the Bosnia war*'.¹⁴⁴ A very recent example of this export business led to the removal of the defence minister of the RS. In October 2002, he and four other officials were arrested for organising smuggling operations to supply MiG-21 aircraft parts to Iraq, in violation of the embargo. The weapons were obtained from the state-owned military factory ORAO and transferred to Iraq through the trading company Jugoimport.¹⁴⁵

Another activity which seems to be managed – although not exclusively – by organised crime is the **black market**. BiH is in fact a significant transit point for illegal commodities including cigarettes, firearms, and fuel oils. According to European sources the country allegedly loses more than Euro 255,640,000 a year due to cigarette smuggling alone¹⁴⁶. According to more recent US sources this sum

¹⁴¹ See above note 22.

¹⁴² Commission of the European Communities, *Bosnia and Herzegovina. Stabilization and Association Report 2003*, cit. See also U.S. Department of State, *Trafficking in Persons Report 2003*, cit.; and M. Lehti, *Trafficking in women and Children in Europe*, cit.

¹⁴³ An IOM report reveals that 'approximately 90% of the trafficked women assisted by IOM state that their customers were from the local community, with the local police being one of the major users IOM, 'Focus on the Balkans', in *Trafficking in Migrants*, Autumn 2000.

¹⁴⁴ I. Davis, C. Hirst, B. Mariani, *Organised Crime, Corruption and Illicit Arms Trafficking in an enlarged EU*, Saferworld, December 2001, p. 25, available at: [http://www.saferworld.co.uk/Organised%20crime .pdf](http://www.saferworld.co.uk/Organised%20crime.pdf) (last verified on 26 March 2004).

¹⁴⁵ 'Bosnian Serb Minister Sacked for Iraq Deals', in *Reuters*, 30 October 2002,.

¹⁴⁶ Assembly of Western European Union, Interim European Security and Defense Assembly, *International Policing in South – Eastern Europe*, 7 December 2000, p. 13 – 16, available at: http://www.assembly-weu.org/en/documents/sessions_ordinaires/rpt/2000/1721.pdf.

is doubled.¹⁴⁷ This demonstrates just how flourishing the black market is. Although the commerce it is not only managed by organised criminals (but also by petty criminals), Bosnian organised groups certainly obtain good profits from smuggling.¹⁴⁸

Corruption is a major problem in the country and is second only to unemployment.¹⁴⁹ It is so widespread in the country that it has been defined by the United States Government and the European Bank for Reconstruction and Development as 'endemic' and up to 2003 almost nothing has been done to curb this phenomenon.¹⁵⁰ Although corruption seems to be present at all levels of Government, the sectors that are perceived to be particularly susceptible to corruption are: political parties, customs officials, police officers and judges.¹⁵¹ Scandals regarding alleged links between the government and organised crime 'rock the country almost every day'.¹⁵² A particularly widespread form of corruption, which is reported by half firms doing business in BiH, is the bribing of public officials in order to avoid taxes and regulations together with contributions to political parties.¹⁵³

Although there is evidence that the financial system is exploited by organised crime in order to **launder** money, it is reported that the proceeds from narcotics trafficking and smuggling crimes are mainly recycled abroad.¹⁵⁴ This has been reported to be due to the fact that in BiH there is a shortage of well-developed financial infrastructures.¹⁵⁵ Nevertheless, during 2002 scandals involved the Government and some important anti-money laundering operations took place in BiH. In June 2002 the FBiH Finance Minister was removed from office¹⁵⁶ and in 2001

¹⁴⁷ The loss of customs revenues due to black-market in BiH is estimated at \$ 500 million per annum. U.S. Department of State, *International Narcotics Control Strategy 2003*, cit.

¹⁴⁸ United Nations Steps up Anti-Corruption Campaign in Bosnia, in *The Balkan Times*, 2001, available at: <http://www.balkantimes.com/html2/english/5101.htm> (last verified on 26 March 2004).

¹⁴⁹ A TI press release reports that every fourth citizen in Bosnia and Herzegovina has been asked to bribe a police officer or a doctor in the last 12 months. Transparency International Press Release, *Widespread Corruption Persists at All Levels in Bosnia and Herzegovina*, Banja luka/Mostar, 9 July 2002, available at: http://www.transparency.org/pressreleases_archive/nat_chaps_press/2002.07.09.bih_widespread.html (last verified on 26 March 2004).

¹⁵⁰ General Accounting Office (GAO), Bosnia. Crime and Corruption Threaten Successful Implementation of the Dayton Peace Agreement, cit. European Bank for Reconstruction and Development, *Strategy for Bosnia and Herzegovina*, 2003, cit.

¹⁵¹ Transparency International Press Release, *Widespread Corruption Persists at All Levels in Bosnia and Herzegovina*, cit.

¹⁵² Assembly of Western European Union, Interim European Security and Defence Assembly, *International Policing in South-Eastern Europe*, cit., p. 13-16.

¹⁵³ GRECO, *Evaluation Report on Bosnia and Herzegovina. First Evaluation Round*. 11 July 2003, available at: <http://www.greco.coe.int/Default.htm> (last verified on 26 March 2004).

¹⁵⁴ U.S. Department of State, *International Narcotics Control Strategy Report 2002*, March 2003, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2002/> (last verified on 26 March 2004).

¹⁵⁵ Deposits into BiH bank are however sharply increasing. U.S. Department of State, cit.

¹⁵⁶ Commission of the European Communities, *Bosnia and Herzegovina. Stabilization and Association Report 2003*, cit., p. 10. See also Transparency International, *Global Corruption Report 2003*, p.197, available at: <http://www.globalcorruptionreport.org/> (last verified on 26 March 2004).

an international contingent of officers (Italian, French, British and German) helped to bring a halt to an organised crime money-laundering racket, which used the Hercegovacka Bank (located in the Federation) to recycle money. The scheme was set up by a Croat criminal organisation with links to a Croat separatist movement.¹⁵⁷

2. LEGISLATION AND PRACTICES

2.1. CRIMINAL LAW

The new criminal code of BiH (in force since 1 March 2003) criminalizes all the main forms of organized crime activities: participation in a criminal association (art. 250, *Organized Crime*),¹⁵⁸ money laundering (art. 209, *Money Laundering*),¹⁵⁹ drug trafficking (art. 195, *Illicit Trafficking in Narcotic Drugs*),¹⁶⁰ and trafficking in human

¹⁵⁷ J.R. Anderson, 'Troops Stage Second Raid on Croat Bank in Search for Money Laundering Evidence', in *Stars and Stripes*, 20 April 2001, available at: <http://ww2.pstripes.osd.mil/01/apr01/ed042001i.html> (See also 'SAS in Bosnia Bank Seizure', 17 June 2002, available at *the BBC News* site: <http://news.bbc.co.uk/1/hi/world/europe/2049806.stm>)

¹⁵⁸ Art. 250 (Organized Crime): (1) Whoever perpetrates a criminal offence prescribed by the law of Bosnia and Herzegovina as a member of an organised criminal group, unless a heavier punishment is foreseen for a particular criminal offence, shall be punished by imprisonment for a term not less than three years. (2) Whoever as a member of an organised criminal group perpetrates a criminal offence prescribed by the law of Bosnia and Herzegovina, for which a punishment of imprisonment of three years or a more severe punishment may be imposed, unless a heavier punishment is foreseen for a particular criminal offence, shall be punished by imprisonment for a term not less than five years. (3) Whoever organises or directs at any level an organised criminal group which by joint action perpetrates or attempts to perpetrate criminal offences prescribed by the law of Bosnia and Herzegovina, shall be punished by imprisonment for a term not less than ten years or a long-term imprisonment. (4) Whoever becomes a member of an organised criminal group which by joint action perpetrates or attempts to perpetrate criminal offences prescribed by the law of Bosnia and Herzegovina, unless a heavier punishment is foreseen for a particular criminal offence, shall be punished by imprisonment for a term not less than one year. (5) A member of an organised criminal group referred to in paragraph 1 through 4 of this Article, who exposes the organised criminal group, may be exempt from punishment.

¹⁵⁹ Art. 209 (Money Laundering): (1) Whoever accepts, exchanges, keeps, disposes of, uses in commercial or other activity, otherwise conceals or tries to conceal money or property he knows was acquired through the perpetration of a criminal offence, when such a money or property is of larger value or when such an act endangers the common economic space of Bosnia and Herzegovina or has detrimental consequences to the operations or financing of institutions of Bosnia and Herzegovina, shall be punished by imprisonment for a term between six months and five years. (2) If the money or property gain referred to in paragraphs 1 of this Article exceeds the amount of 50.000 KM, the perpetrator shall be punished by imprisonment for a term between one and ten years. (3) If the perpetrator, during the perpetration of the criminal offences referred to in paragraphs 1 and 2 of this Article, acted negligently with respect to the fact that the money or property gain has been acquired through perpetration of a criminal offence, he shall be punished by a fine or imprisonment for a term not exceeding three years. (4) The money and property gain referred to in paragraph 1 through 3 shall be forfeited.

¹⁶⁰ Art. 195 (Illicit Trafficking in Narcotic Drugs): (1) Whoever without authorization performs an international sale or transfer or offers for such sale, or purchases, keeps, transports or transfers for the purpose of such sale, or intercedes in an international sale or purchase, sends, delivers, imports or exports or otherwise puts into unauthorised international circulation substances or preparations which are by regulation proclaimed narcotic drugs, shall be punished by imprisonment for a term between one and ten years. (2) Whoever organizes a group of people with an aim of perpetrating the criminal offence referred to in paragraph 1 of this Article, or whoever becomes a member of such a group of people, shall be punished by imprisonment for a term not less than three years. (3) Whoever without authorization makes, procures, intermediates or gives for use the equipment, material or substances knowing that they are to be used for the manufacturing of narcotic drugs, when it concerns an international transaction, shall be punished by

beings (art. 186, *Trafficking in Persons* and art. 187, *International Procuring in Prostitution*).¹⁶¹

Legal persons may be held accountable for criminal offences defined in the new code and other criminal offences defined by a law of Bosnia and Herzegovina (art. 10 CC and art. 143 CC). The criminal code devotes an entire chapter (Chapter XIV) of 22 articles to the issue of the liability of legal persons, whose criminalisation in the criminal law is up to the standards prescribed by the international community.¹⁶²

BiH has also signed and ratified most of the relevant international and European instruments against organised crime: the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (accession on 01.09.1993), the 1999 Council of Europe Criminal Law Convention on Corruption (ratified on 01.07.2002), the 2000 United Nations Convention against Transnational Organised Crime and its Protocol on trafficking of persons (ratified on 24.04.2002).

However BiH has not yet ratified the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and also with regard to the ratified instruments, the correspondence of the literal provisions of the BiH criminal code to the standards is not uniform for all the relevant criminal activities.

imprisonment between six months and five years. (4) The narcotic drugs and means for their production shall be forfeited.

¹⁶¹ Art. 185 (Trafficking in Persons): (1) Whoever takes part in the recruitment, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to obtain the consent of a person having control over another person, for the purpose of exploitation, shall be punished by imprisonment for a term between one and ten years. (2) Whoever perpetrates the criminal offence referred to in paragraph 1 of this Article against a juvenile, shall be punished by imprisonment for a term not less than five years. (3) Whoever organizes a group of people with an aim of perpetrating the criminal offences referred to in paragraphs 1 and 2 of this Article, shall be punished by imprisonment for a term not less than ten years or long-term imprisonment. (4) Whoever acting out of negligence facilitates the perpetration of the criminal offences referred to in paragraphs 1 through 3 of this Article, shall be punished by imprisonment for a term between six months and five years. (5) 'Exploitation' referred to in paragraph 1 of this Article includes, in particular, exploiting other persons by way of prostitution or of other forms of sexual exploitation, forced labour or services, slavery or slavery-like practices, serving under coercion or removal of organs for the purpose of transplantation.

Art. 187 (International Procuring in Prostitution): (1) Whoever procures, entices or leads another person to offer sexual services for profit within a state excluding the one in which such a person has residence or of which he is a citizen, shall be punished by imprisonment for a term between six months and five years. (2) Whoever, by force or threat of force or deceit, coerces or induces another person to go to the state in which he has no residence or of which he is not a citizen, for the purpose of offering sexual services upon payment, shall be punished by imprisonment for a term between six months and five years. (3) If the criminal offence referred to in paragraphs 1 and 2 of this Article is perpetrated against a child or a juvenile, the perpetrator shall be punished by imprisonment for a term between one and ten years. (4) The fact whether the person procured, enticed, led away, forced or deceived into prostitution has already been engaged in prostitution is of no relevance for the existence of a criminal offence.

¹⁶² The full text of the provisions of the BiH related to criminal liability is available on the CD '*Legal Materials*' attached to this report.

With regard to trafficking in persons, articles 186 CC and art. 187 CC do not fully adopt the UN definition. There are three critical points the experts of the LARA Project¹⁶³ of the Council of Europe mentioned with regard to this definition before its enactment and these are still applicable to the current provisions:

- the absence of reference to the issue of consent, which is addressed by art. 3 (b) of the UN Protocol, i.e. the consent of a victim of trafficking in persons to the intended exploitation shall be irrelevant where the means of trafficking described in the Protocol, and included in the BiH code, are deployed;
- the absence of consistency in relation to the penalties, as in some paragraphs there is a range e.g. 'one to ten years', whilst in others, there is only a specified minimum penalty;
- the absence of a fundamental distinction made in the Protocol, i.e. that whilst trafficking in children encompasses the same acts and purposes as trafficking in adults, it does not necessarily require the use of any of the means set out in the Protocol.

The legal terms used to describe the offence of money laundering in art. 209 CC appear to be rather vague. In particular, the object of the criminal conduct ('money or property of larger value') is not clearly defined and it is very nationally oriented ('when such an act endangers the economic space of Bosnia and Herzegovina or has detrimental consequences to the operations or financing of institutions of Bosnia and Herzegovina'). New legislation is however being drafted by the MONEYVAL Group and a report on these improvements should come out in the next few months.

2.2. CRIMINAL PROCEDURE

BiH has made great progress in the criminal law definition of illegal activities related to OC, however the international and European standards for criminal procedure provisions still remain partially unmet.

The most evident gap concerns witness protection, because regulations and instruments are yet to be developed, despite the recent enactment of the Law on Protection of Threatened and Endangered Witnesses (Official Gazette of Bosnia and Herzegovina n. 36/03). The problem is under scrutiny by the Ministry of Justice, this being the first time BiH has tackled witness protection.¹⁶⁴ To render this

¹⁶³ E. Shang-Simpson, *Opinion and Commentary on Criminal Law Reform in South-Eastern Europe applicable in Bosnia and Herzegovina*, LARA Project – Criminal Law Reform Against Trafficking in Human Beings, February 2003, available at the website of the Council of Europe (last verified on 18 February 2004). Some of the comments made by the experts of LARA Project were addressed in the final version of the BiH criminal code and namely the definition of 'minor' and 'negligence'. The other criticisms are reported in the text of this report.

¹⁶⁴ N. Sladoje, *Comments on the Opinion and Commentary on the Legal Provisions on Trafficking in Human Beings applicable in Bosnia and Herzegovina*, LARA Project – Criminal Law Reform Against Trafficking in Human Beings, April 2003, p. 3, available at the website of the Council of Europe (last verified on 18 February 2004).

legislation operational a witness protection system is going to be established.¹⁶⁵ This represents one of the key priorities for BiH especially with regard to the fight against trafficking of persons.¹⁶⁶

Apart from this, the new Code of Criminal Procedure has greatly updated its investigative tools against organised crime (Chapter IX, *Special investigative actions*) and the new Code of Criminal Law has developed a confiscation regime, which is up to the standards required by the international community (Chapter XII, *Confiscation of material gain acquired through the perpetration of a criminal offence and legal consequences incident to conviction*).

The current legal framework includes all the special means of investigation, namely: interceptions of telephone conversations, fax and internet transmissions, audio or video recording of events taking place on private premises, undercover operations, use of storefronts by investigative units and covert methods such as controlled delivery.¹⁶⁷ All these investigative tools can be ordered by the preliminary proceedings judge in an order based upon a properly reasoned motion from the Prosecutor (art. 118, section 1, CC). Exceptionally, if a written order cannot be received in due time and if delay poses a risk, the execution of these measures may commence on the basis of a verbal order pronounced by the preliminary proceedings judge, but the written order must be obtained within 24 hours following the verbal one. The special means of investigation can be deployed for all serious crimes, i.e. criminal offences for which a prison sentence of minimum three years or more may be pronounced (art. 117 CC). The evidence obtained through the undertaking of special measures may be used as evidence in criminal proceedings, but the undercover investigator and informant may be questioned as witnesses about the way in which the measures were executed.

¹⁶⁵ Council of Europe, *Report presented by the Ministry of Justice of Bosnia and Herzegovina*, 25th Conference of European Ministries of Justice, Sofia, 9–10 October 2003, available at the website of the Council of Europe (last verified on 18 February 2004).

¹⁶⁶ E. Shang-Simpson, *Opinion and Commentary on Criminal Law Reform in South-Eastern Europe applicable in Bosnia and Herzegovina*, cit., p.3.

¹⁶⁷ Art. 116 (Types of special investigative actions and conditions of their application): (1) If evidence cannot be obtained in another way or its obtaining would be accompanied by disproportional difficulties, special investigative measures may be ordered against a person against whom there are grounds for suspicion that he has committed or has along with other persons taken part in committing or is participating in the commission of an offence referred to in Article 117 of this Code. (2) Measures referred to in Paragraph 1 of this Article are as follows: a) surveillance and technical recording of telecommunications; b) access to the computer systems and computerized data processing; c) surveillance and technical recording of premises; d) covert following and technical recording of individuals and objects; e) use of undercover investigators and informants; f) simulated purchase of certain objects and simulated bribery; g) supervised transport and delivery of objects of criminal offence. (3) Measures referred to in Item a) of Paragraph 2 of this Article may also be ordered against persons against whom there are grounds for suspicion that he will deliver to the perpetrator or will receive from the perpetrator of the offences referred to in Article 117 of this Code information in relation to the offences, or grounds for suspicion that the perpetrator uses a telecommunication device belonging to those persons. (4) Provisions regarding the communication between the suspect and his or her defence attorney shall apply accordingly to the discourse between the person referred to in Paragraph 1 of this Article and his or her defence attorney. (5) In executing the measures referred to in Items e) and f) of Paragraph 2 of this Article police authorities or other persons shall not undertake activities that constitute an incitement to commit a criminal offence. If nevertheless such activities are undertaken, this shall be an instance precluding the criminal prosecution against the incited person for a criminal offence committed in relation to those measures.

Confiscation is provided on the basis of an ‘all crime’ approach (art. 110 CC). One weakness is that this instrument is conviction-based, i.e. it can be deployed only after a sentence is passed by the judge and not at the preliminary stages of the proceedings. This also means that prosecutors cannot use this instrument in an independent proceeding when the owner of the property is absent, dead or unidentified. There are however at least two noteworthy elements in the BiH confiscation regime. First, not only ‘property confiscation’ is admitted but also ‘value confiscation’ (art. 111, *Ways of Confiscating Material Gain*). This basically means that in case the confiscation of property acquired by the perpetration of the offence is not feasible, the perpetrator shall be obliged to pay an amount of money which corresponds to the acquired material gain. A second strength of the BiH confiscation regime regards the proof of the illegal provenience of the material gain. What is sometimes erroneously defined as ‘reversal of proof’, here applies: if there is a probable cause to believe that the gain derives from a criminal offence and the owner or possessor is not able to provide evidence that the gain was acquired legally, the material gain may be confiscated.

2.3. DATA PROTECTION RULES

These rules are based on Articles IV.4, II and III of the Constitution. The Parliamentary Assembly of Bosnia and Herzegovina, in the session of the House of Representatives held on November 30, 2001 and in the session of the House of Peoples held on December 20, 2001, adopted a Law On The Protection Of Personal Data (Law n. 32/01 of 20 December 2001). It is based on the EU Data Protection Directive.

The new law applies to law enforcement agencies that are also bound to ensure that personal data are not further processed in a way which is incompatible with the purposes for which the data were collected under the new criminal code (art. 149, *Unauthorised use of personal data*).¹⁶⁸

Furthermore data protection rules also apply to the Central Data Processing Centre established with the Law on Central Registers and Data Exchange (Official Gazette of BiH no. 32, 28 December 2001). This is relevant for the exchange of information between law enforcement agencies, because one of the registers retained in the Centre is the ‘Register on criminal records’, which contains relevant data on criminal cases.¹⁶⁹

The new law also establishes a supervisory authority to deal with data protection matters (art. 19, *Data protection commission*), whose members ‘shall be independent and impartial and shall not be elected officials or hold any political

¹⁶⁸ Art. 149 (Unauthorized Use of Personal Data): An official or responsible person in institutions of Bosnia and Herzegovina who, without the consent of an individual and contrary to the conditions stipulated by the law, collects, processes or uses his personal data, or uses such data contrary to the statutory purpose of their collection, shall be punished by a fine or by imprisonment not exceeding six months.

¹⁶⁹ Art. 40 (Purpose of the Register): The purpose of the Register on Criminal Records is: a. to maintain a list of criminal cases in BiH. b. to provide information to authorized law enforcement agencies in BiH to help apprehend criminals and reduce crime. c. to provide records regarding wanted persons, missing persons, unidentified persons, and stolen property. d. to support inter-entity and international law enforcement activities. e. to support the activities of entity and BiH criminal justice systems.

mandate'. The powers and function of this Commission are those detailed in art. 20 of the Law, which are:

- observe the implementation of this Law and other laws on data processing;
- examine complaints lodged with the Commission;
- present an annual report on data protection to the Parliamentary Assembly of Bosnia and Herzegovina.

As regards to data flow, Article 8 (*Data Transfer Abroad*) provides that personal data 'shall not be transferred from the country to a data controller or data processor abroad, whatever the data medium or the mode of transmission is, unless the conditions of Article 5 [data protection requirements] of this Law are complied with and provided that the same principles of data protection are obeyed by the foreign controller in respect of the data'.

2.4. MULTILATERAL AND BILATERAL AGREEMENTS

a) Legislation

The most evident gap in the framework for assistance is that, despite the recent entrance of BiH into the Council of Europe, BiH has not yet ratified any of the following international and European instruments for judicial and police cooperation: the European Convention on Extradition (1957 COE – ETS 024), the First additional Protocol to the European Convention on Extradition (1975 COE – ETS 086), the Second additional Protocol to the European Convention on Extradition (1975 COE – ETS 098), the European Convention on Mutual Assistance in Criminal Matters (1959 COE – ETS 030) and its two protocols.¹⁷⁰

As to multilateral and bilateral agreements for international judicial assistance, some progress was made in 2003 with regards to SECI Center and BiH–Croatian relations. In particular, a bilateral agreement on cooperation in fighting corruption, smuggling, drug abuse and organised crime has been signed with Croatia.¹⁷¹

b) Practices

Given the absence of ratified international and European instruments it has not been possible to verify their frequency of use. Practical police and judicial assistance currently occurs through the *Interpol National Central Bureau in BiH* and will also exploit the newly created channels (SIPA, Central Court and Prosecution Office). More detailed information on these new offices is provided below.

¹⁷⁰ BiH has recently signed (on 30 April 2004) the European Convention on Extradition (1957 COE – ETS 024), the First additional Protocol to the European Convention on Extradition (1975 COE – ETS 086), the Second additional Protocol to the European Convention on Extradition (1975 COE – ETS 098), the European Convention on Mutual Assistance in Criminal Matters (1959 COE – ETS 030) and its first protocol.

¹⁷¹ European Commission, *Bosnia and Herzegovina, Stabilisation and Association Report 2003*, SEC (2003) 240, Brussels, 26 March 2003, p. 13–30.

2.5. DIRECT CHANNELS OF POLICE AND JUDICIAL COOPERATION

a) Legislation

No information could be found regarding judicial cooperation due to the absence of a judicial expert.

BiH has signed agreements that provide for direct police cooperation with Croatia and Serbia–Montenegro.

If BiH police officers are directly contacted by police officers from another country asking for assistance they are obliged by law to forward the request to their competent colleagues. However, if BiH police officers gather information on a transnational organised crime ring they are not obliged by law to forward that information to the authorities of the other country.

When foreign police officers start a shadowing operation in her/his country, s/he can be authorised to continue it within the borders of BiH in cooperation with the BiH police.

If requested, BiH police can send to the police of a foreign country the following information: phone and bank records, documents related to auto vehicle ownership, and documents related to criminal records.

BiH do not have any liaison officers, apart from one at the SECI Regional Center for Combating Transborder Crime in Bucharest. According to the expert's opinion, the process of sending liaison officers abroad is very important for better communication between different law enforcement agencies. This channel of cooperation would be particularly important for Croatia, Serbia and Montenegro and Germany.

Finally BiH carry out joint investigations and international joint surveillance operations with Croatian and Serbia–Montenegro law enforcement authorities.

b) Practices

Direct police cooperation has been enhanced by the work of the International Police Task Force. The co–location of international police officers and specialists alongside local counterparts has fostered useful contacts and is an effective means of improving local police performance. Police officers are informed of the possibility of directly cooperating through bilateral agreements, but information regarding this could be more widespread.

There are however practical difficulties to cooperation between BiH and other countries. Despite a medium level of training, BiH police officers are not fully informed of the existing possibilities of cooperation (direct, through joint investigative teams, through international joint surveillance operations), they do not have translators readily available and they do not have the necessary technical equipment (computer networks and official email accounts).

2.6. INTERNATIONAL AND REGIONAL ORGANISATIONS

a) Legislation

Before the state police reform (with the operational enactment of the State Border Service and SIPA), the *Interpol National Central Bureau in BiH* was the only law enforcement organisation operating at a state level in BiH. It provides the police of other countries with the following acts of cooperation, if requested:

- information regarding investigations of crimes committed in BiH;
- information on investigations aimed at tracing goods located in BiH, which are related to a crime committed abroad;
- information regarding BiH criminal records;
- information related to the ownership of auto vehicles and regarding driving licenses issued in BiH;
- information regarding the ownership of BiH phone numbers.

There is no cooperation and exchange of information agreement with Europol. It is also unclear whether Europol could exchange personal data with the European Union Police Mission (EUPM). The Europol Convention would require a formal cooperation agreement to allow for the exchange of personal data to non Member States. This would imply a serious assessment of data protection rules operating in BiH by the Joint Supervisory Board of Europol.

Bosnia and Herzegovina is also part of the SECI Center and has stationed a liaison officer in Bucharest to carry out operational activities.

b) Practices

The normal instrument for identifying competent counterparts in foreign countries is Interpol. The Interpol National NCB is located in Sarajevo and is considered to be well equipped and staffed and, before the above-mentioned state police reform, used to operate not only in the field of international assistance but also at a local level.

An evaluation of the practical implementation of the SECI Agreement is given in the next section (*Good practices*).

The following table illustrates the level of cooperation between Interpol and BiH (where 0=no cooperation, 1=low level of cooperation, 2=medium level of cooperation and 3=high level of cooperation) in the different areas in which it operates. This evaluation is based on the judgement of the experts and is thus subjective.

TABLE 4. DEGREE OF COOPERATION BETWEEN BIH AND INTERPOL

Exchange of strategic and operational information	2
Exchange of financial information on suspected corporate entities	2
Provision of direct contacts with local law enforcement authorities	2
Provision of direct contacts with local prosecution offices	2
Exchange of information on investigative procedures and crime prevention methods	2
Training initiatives	1
Advice and support in individual investigations	2
Exchange of liaison officers	1
Participation in joint investigative teams in a support capacity	2
Participation in joint investigative teams in an operative capacity	2

3. GOOD PRACTICES

3.1. STRUCTURES SET UP FOR INTERNATIONAL COOPERATION PURPOSES

As regards to judicial cooperation, according to the new judicial system (enacted as of January 2004), the centralised Court of Bosnia and Herzegovina is now competent to decide upon any issue relating to international and inter-entity criminal law enforcement. These include relations with Interpol and other international police institutions and decisions on the transfer of convicted persons, or the extradition and surrender of persons, requested from any authority in the territory of Bosnia and Herzegovina, by any foreign state, international court or tribunal.

Additionally, the Court is competent in legal aid requests from foreign countries (30th chapter of the new Criminal Procedure Code) and responsible for maintaining a database on criminal offences and perpetrators (see *infra* paragraph 3.2).

As regards to police cooperation, the new Ministry of Security now has responsibility for international police cooperation. The other point of reference in this field is Interpol (see paragraph 2.6).

Given the very recent establishment of a new central court (January 2004) and Ministry of Security, it has not been possible to verify their implementation.

3.2. DATABASES ON ORGANISED CRIME

With regard to criminal databases, the centralised Court of Bosnia and Herzegovina is now obliged to keep a centralised system of data on any criminal offences and perpetrators. In addition this database should contain any valid verdicts concerning criminal offences of the production and circulation of false money, unauthorized production, processing and trade in drugs and poison, human trafficking, dissemination of pornography as well as other criminal offences for which

international agreements foresee a centralization of data. The Court is obliged to communicate, this information, without delay, to the competent Ministry of Bosnia and Herzegovina. As regards the offences of money laundering or cases involving a criminal offence pertaining to money laundering, information must also be delivered without delay to the Bosnia and Herzegovina authority responsible for the prevention of money laundering (art. 411 CCP).

Given the very recent establishment of the new data keeping system it has not been possible to verify its implementation.

In Bosnia and Herzegovina, before these innovations, there were two databases: the Ministry of the Interior of the Federation of Bosnia and Herzegovina had one, and the Ministry of the Republic of Srpska had another one. These databases contained information about persons *wanted* in BiH for participating in organised criminal groups, but no information on persons *convicted* for the same crime, because these criminal records used to be kept in the place where the convicted person was born. The databases, which contained information about persons *wanted* in BiH for participating in organised criminal groups were not directly accessible by foreign police officers.

3.3. *MODI OPERANDI*/METHODS IN THE INTERNATIONAL COOPERATION PROCESS

Bosnia and Herzegovina has enacted the following *modi operandi*/methods in order to speed up the international cooperation process:

- acknowledgement of all requests and written enquiries concerning the execution of requests;
- providing the *requesting* authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing the request;
- giving priority to requests which have clearly been marked 'urgent' by the requesting authority;
- giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authority how the difficulty might be overcome;
- stating when the assistance requested is likely to be provided;
- explaining the reasons for the urgency or deadline;
- ensuring that requests are submitted in compliance with the relevant treaty or other international arrangements;
- providing the *requested* authorities with the name and contact details, including telephone and fax numbers, of the authority and, if possible, the person responsible for issuing the request;
- compliance with the formalities and procedures expressly indicated by the requesting member state;
- spontaneous exchange of information;

- establishment of common criminal databases;
- liaison officers stationed in the countries of the Region and in EU member states, or in the organisations that are relevant for police and judicial cooperation (Interpol, Eurojust, Europol, SECI Center, etc.);
- joint operational meetings;
- direct (personal) channels of communication;
- interagency coordination protocols.

Other good practices specifically developed in BiH in order to enhance the cooperation process are:

The State Agency for Protection and Information (SIPA)

Bosnia and Herzegovina has recently set up SIPA in the newly centralised Ministry of Security. This agency is supposed to play a key role in the fight against organized crime in Bosnia and Herzegovina. It has three specific missions: to protect BiH public institutions and foreign diplomatic presence; to protect VIPs employed by the state or members of foreign diplomatic missions; to collect data on all criminal offences in one national centralised database. The SIPA provides a concrete example of how to effectively deal with transnational organised crime. Its main strengths are:

- by centralising the fight against organised crime in one organisation, it is clear who is responsible for it; this should allow an immediate identification of the counterparts by foreign prosecutors and police officers investigating transnational organised cases;
- SIPA staff are provided with adequate salaries, which allow them to focus their energies on their jobs and make them less vulnerable to corruption;
- the SIPA has wide ranging investigative powers and material means, which allow it to obtain more information.

The SECI Center

BiH has liaison officers stationed at the SECI Center. This structure has developed some practices, which could be useful to overcome the obstacles arising in investigations dealing with transnational organised crime cases:

- interviews with witnesses: law enforcement agencies carrying out transnational organised crime investigations can use the structures of the SECI Center to allow witnesses to travel to their countries for hearings or to carry out interviews with witnesses at the SECI Center. In these cases SECI will pay the expenses for victims who wish to testify and will allow its facilities to be used for these purposes.
- organisation of meetings between law enforcement agencies and prosecutors from different countries. During these meetings information is exchanged and relevant agencies make plans on how to tackle the problem together.

4. EMERGING OBSTACLES

The analysis of legislation, practices and good practices relevant for international cooperation against organized crime has highlighted some shortcomings that are reported here for the sake of clarity, as they represent the background and rationale for the recommendations included in paragraph 5.

4.1. OBSTACLES IN LEGISLATION

1) The vagueness of legal provisions criminalizing money laundering

The legal terms used to describe the offence of money laundering in art. 209 CC appear to be rather vague. In particular, the object of the criminal conduct ('money or property of larger value') is not clearly defined and it is very nationally oriented ('when such an act endangers the economic space of Bosnia and Herzegovina or has detrimental consequences on the operations or financing of institutions of Bosnia and Herzegovina'). This approach may be an obstacle to investigations dealing with money laundering at an international level.

2) The gaps in the definitions on trafficking in human beings

Articles 186 CC and art. 187 CC do not fully adopt the UN definition. Three are the critical points:

- the absence of reference to the issue of consent (the intended exploitation should be irrelevant where the means of trafficking described in the UN Protocol, and included in the BiH code, are deployed);
- the absence of consistency in relation to the penalties, as in some paragraphs there is a range e.g. 'one to ten years', whilst in others, there is only a specified minimum penalty;
- the absence of a fundamental distinction made in the UN Protocol, i.e. that whilst trafficking in children encompasses the same acts and purposes as trafficking in adults, it does not necessarily require the use of any of the means set out in the Protocol.¹⁷²

3) The lack of instruments for witness protection

Regulations and instruments regarding witness protection are yet to be developed, despite the recent enactment of the Law on the Protection of Threatened and Endangered Witnesses (Official Gazette of Bosnia and Herzegovina n. 36/03). This gap might be an obstacle in investigations dealing with OC groups in BiH, because witnesses and their families can be easily threatened by these groups.

¹⁷² On these critical points see E. Shang-Simpson, *Opinion and Commentary on Criminal Law Reform in South-Eastern Europe applicable in Bosnia and Herzegovina*, cit.

4) The absence of multilateral and bilateral agreements on data protection

Despite the enactment of very recent legislation on data protection, BiH has not yet ratified the 1981 COE Convention and relative data protection provisions. Furthermore, it has not concluded bilateral or multilateral agreements (not even with Europol) within the framework of police and judicial cooperation containing provisions to protect personal data.

The absence of such legal instruments obstructs police and judicial cooperation with the countries that have enacted a data protection regime and are party to the 1981 COE Convention.

5) The lack of ratification of international instruments and bilateral agreements on judicial and police cooperation

After the break up of Yugoslavia, BiH did not accede any of the COE basic treaties for legal cooperation in criminal matters.¹⁷³ Also bilateral treaties on judicial cooperation are lacking. The absence of these instruments may hamper and/or slow the cooperation process, leaving open only diplomatic channels.

4.2. OBSTACLES IN PRACTICES

6) The poor quality of knowledge about international cooperation possibilities

Even if the general level of training of police officers is rated as good, there is a lack of specific training regarding the possibilities of international cooperation. This lack of knowledge impedes the common use of some channels for the exchange of information and cooperation, such as, for instance, the Interpol communication system or the SECI Center facilities.

Moreover, as the expert interviewed pointed out: 'in BiH (like most Eastern European countries) prosecutors have now acquired relevant powers in the investigations and prosecutions of TOC cases, but they are not always aware of these new possibilities'.

7) The lack of technological means

Most BiH police officers do not have a computer network (intranet) or an official email account. This lack of technological means slows down the process of cooperation and exchange of information.

8) The failure to use direct channels of cooperation

There is only one liaison officer stationed abroad by BiH (SECI Center liaison officer). Joint investigative teams and international joint customs surveillance operations are rarely carried out by BiH officers. All these means of direct

¹⁷³ BiH has recently signed (on 30 April 2004) the European Convention on Extradition (1957 COE – ETS 024), the First additional Protocol to the European Convention on Extradition (1975 COE – ETS 086), the Second additional Protocol to the European Convention on Extradition (1975 COE – ETS 098), the European Convention on Mutual Assistance in Criminal Matters (1959 COE – ETS 030) and its first protocol.

cooperation could be exploited for exchanging information and speed up the process.¹⁷⁴

9) The low level of cooperation with Europol, Eurojust, SECI and EJN

Among the international and regional organisations dealing with police and/or judicial cooperation, BiH has a good level of cooperation only with Interpol. Other organisations, which could be very useful to exchange information and to promote coordinated actions such as those referred in recommendation n. 8, are not fully exploited for these purpose.¹⁷⁵

4.3. OBSTACLES IN GOOD PRACTICES

10) The missing implementation of centralised structures for international cooperation

New state institutions (Court of Bosnia and Herzegovina and SIPA) have been recently formed for the purposes of international police and judicial cooperation. However, these institutions are not yet operational due to the lack of material resources such as offices and personnel. This lack of implementation might represent an obstacle to international cooperation, because without a central authority it is difficult to correctly address assistance requests and identify counterpart colleagues if direct contact is not already in place.

11) The absence of a database containing information on persons convicted for participating in OC groups

The Court of Bosnia and Herzegovina is now obliged to keep a centralised system of data on criminal offences and perpetrators. In addition this database should contain any valid verdict concerning criminal offences of the production and circulation of false money, unauthorized production, processing and trade in drugs and poison, human trafficking, dissemination of pornography as well as other criminal offences for which international agreements foresee a centralization of data.

However this database is not yet running and the old database systems are inadequate to provide effective communication of information on organised crime, because they contain information on persons wanted in BiH for participating in organised criminal groups, but not information on persons convicted for the same crime. In any case, they are not directly accessible by foreign police officers.

¹⁷⁴ As the expert interviewed pointed out: 'Informal contacts through SECI and other channels available (e.g. liaison officers and magistrates, joint investigation teams, etc.) should be made before formal requests are put forward in order to make them more precise and easier to carry out'.

¹⁷⁵ According to the expert interviewed, the SECI Center is very useful, but not fully exploited by BiH. In particular a liaison officer from customs should be sent from BiH to the SECI Center.

4.4. OTHER OBSTACLES MENTIONED BY THE EXPERTS

12) Obstacles to police assistance

The experts interviewed mentioned the following as the most significant obstacles to police assistance received by BiH from other countries in pre-trial investigations into transnational organised crime:

- lack of harmonisation in legislation;
- difficulty in identifying the foreign competent counterpart;
- language problems;
- lack of human resources;
- lack of financial resources;
- lack of training;
- high turnover of personnel in the police forces.

5. RECOMMENDATIONS

5.1. RECOMMENDATIONS ON LEGISLATION

Recommendation n. 1

'Improving money laundering regime'

Background and rationale

The legal terms used to describe the offence of money laundering in BiH (art. 209 CC) appear rather vague: the object of the criminal conduct is not clearly defined ('money or property of larger value') and are too nationally oriented ('when such an act endangers the economic space of Bosnia and Herzegovina or has detrimental consequences to the operations or financing of institutions of Bosnia and Herzegovina').

Recommendation

Action should be taken to expand the criminal definition of money laundering and bring it up to COE and internationally recognised standards.

Implementing measures

The forthcoming AML legislation should reformulate art. 209 CC taking into account the above mentioned gaps in the current definition.

Recommendation n. 2

'Improving trafficking in persons criminal definition'

Background and rationale

The definitions of trafficking in persons contained in art. 186 and 187 CC do not follow the internationally recognized definition given in art. 3 b) of the UN Protocol, because it does not refer to the issue of consent and the distinction that whilst trafficking in children encompasses the same acts and purposes as trafficking in adults, it does not necessarily require the use of any of the means set out in the Protocol.

Furthermore there is an absence in consistency in relation to the penalties, as in some paragraphs there is a range e.g. 'one to ten years', whilst in others, there is only a specified minimum penalty.

Recommendation

Action should be taken to correct the criminal definition of trafficking in persons and bring it up to the UN and internationally recognised standards.

Implementing measures

BiH should reformulate the criminal definitions of trafficking in persons contained in art. 186 and 187 CC taking into account the above mentioned gaps in the current definition.

Recommendation n. 3

'Enacting an effective witness protection plan'

Background and rationale

Regulations and instruments regarding witness protection have yet to be developed, despite the recent enactment of the Law on Protection of Threatened and Endangered Witnesses (Official Gazette of Bosnia and Herzegovina n. 36/03). The problem is under scrutiny by the Ministry of Justice. This gap might be an obstacle in investigations dealing with OC groups in BiH, because witnesses and their families can be easily threatened by these groups.

Recommendation

Action should be taken to enact an effective witness protection plan.

Implementing measures

The BiH Ministry of Justice should develop an adequate witness protection regulation and might consider protection given to the victims during trials through modern technological means (video conferences) and also protection for the families of the victim who wants to testify.

Recommendation n. 4

'Concluding agreements on data protection'

Background and rationale

Despite the enactment of very recent legislation on data protection, BiH has not yet ratified the 1981 COE Convention and relative data protection provisions. Furthermore, it has not concluded bilateral or multilateral agreements (not even with Europol) within the framework of police and judicial cooperation containing provisions to protect personal data. The absence of such legal instruments obstructs police and judicial cooperation with the countries that have enacted a data protection regime and are party to the 1981 COE Convention.

Recommendation

Action should be taken to promote the recognition of the existence of an adequate data protection regime in BiH.

Implementing measures

BiH should ratify the 1981 COE Convention and conclude multilateral agreements on this issue. In particular, BiH should reach an agreement with Europol. This would enable BiH law enforcement agencies and prosecution offices to legally exchange personal data with all their foreign counterpart colleagues in the Region and also with EU Member States.¹⁷⁶

¹⁷⁶ As the expert interviewed pointed out: 'It is very important to make law enforcement agencies and prosecution offices understand what data protection is about. There is a need for clear laws on what police officers and prosecutors can and cannot do. In the absence of this, international organisations such as the SECI Center can be used in the process of securely and effectively exchanging information'.

Recommendation n. 5

'Acceding relevant international and bilateral cooperation treaties'

Background and rationale

After the break up of Yugoslavia, BiH did not accede to any of the COE basic treaties for legal cooperation in criminal matters.¹⁷⁷ Also bilateral treaties on judicial cooperation are lacking. The absence of these instruments may hamper and/or slow the cooperation process, leaving open only diplomatic channels.

Recommendation

Action might be taken to accede to all the relevant treaties.

Implementing measures

- BiH should ratify the 1957 COE Convention, the 1975 COE Protocol, the 1978a COE Protocol, the 1959 COE Convention and the 1978b COE Protocol.
- It should also establish bilateral agreements on judicial cooperation with all neighbouring countries.

¹⁷⁷ BiH has recently signed (on 30 April 2004) the European Convention on Extradition (1957 COE – ETS 024), the First additional Protocol to the European Convention on Extradition (1975 COE – ETS 086), the Second additional Protocol to the European Convention on Extradition (1975 COE – ETS 098), the European Convention on Mutual Assistance in Criminal Matters (1959 COE – ETS 030) and its first protocol.

5.2. RECOMMENDATIONS ON PRACTICES

Recommendation n. 6

'Improving the level of training in investigating TOC cases'

Background and rationale

Even if the general level of training of police officers is rated good, there is a lack of specific training about the possibilities of international cooperation. This lack of knowledge impedes the common use of some channels of exchange of information and cooperation, such as, for instance, the Interpol communication system or SECI Center facilities.

Moreover, as the expert interviewed pointed out: 'in BiH (as in most Eastern European countries) prosecutors have now acquired relevant powers in the investigations and prosecutions of TOC cases, but they are not always aware of these new possibilities'.

Recommendation

Action should be taken to improve the knowledge of international and regional cooperation possibilities and new powers and competences of prosecutors.

Implementing measures

- Training courses and seminars on international and regional cooperation should be organised for middle management level police officers.¹⁷⁸
- Training should be given to young police officers in BiH police schools regarding international and regional cooperation.

¹⁷⁸ As the expert interviewed pointed out: 'More information and training should be given to national law enforcement agencies and prosecution offices about the legal possibilities of cooperation, including SECI facilities and its usefulness. Training on regional cooperation could be carried out by the SECI Center, Interpol and other organizations which can offer concrete examples of regional and international cooperation'.

Recommendation n. 7

'Improving technological equipment available to police officers'

Background and rationale

Most of BiH police officers do not have a computer network (intranet) or an official email account. This lack of technological means slow down the process of cooperation and exchange of information.

Recommendation

Action might be taken to improve the technological equipment available to police officers.

Implementing measures

BiH should furnish police officers involved in transnational organised crime cases with adequate technological equipment starting from the very basic tools for speedy communication among long distant colleagues, such as computer networks and official email accounts.

Recommendation n. 8

'Enhancing the use of direct channels of cooperation'

Background and rationale

There is only one liaison officer stationed abroad by BiH (SECI Center liaison officer). Joint investigative teams and international joint customs surveillance operations are rarely carried out by BiH officers. All these means of direct cooperation could be exploited for exchanging information and will provide faster and better results.¹⁷⁹

Recommendation

Action should be taken to enhance the use of liaison officers, joint investigative teams, international joint customs surveillance operations.

Implementing measures

- There should be more BiH liaison officers in the countries mostly involved in TOC cases connected with this country.
- Joint investigative teams and international joint customs surveillance operations should be carried out on a regular basis when dealing with TOC cases.

¹⁷⁹ As the expert interviewed pointed out: 'Informal contacts through SECI and other channels available (e.g. liaison officers and magistrates, joint investigation teams, etc.) should be made before formal requests are put forward in order to make them more precise and easier to carry out'.

Recommendation n. 9

'Promoting cooperation with international and regional organisations'

Background and rationale

Among the international and regional organisations dealing with police and/or judicial cooperation, BiH has a good level of cooperation only with Interpol. Other organisations, which could be very useful to exchange information and to promote coordinated actions such as those referred in recommendation n. 8, are not fully exploited for these purpose.¹⁸⁰

Recommendation

Action should be taken to promote cooperation with international and regional organisations.

Implementing measures

- There should be more BiH liaison officers/magistrates in the international and regional organisations dealing with police cooperation (e.g. Europol) and judicial cooperation (Eurojust, EJM).
- There should be more training about the possibilities of these organisations and their potential usefulness for cooperation needs.

¹⁸⁰ According to the expert interviewed, the SECI Center is very useful, but not fully exploited by BiH. In particular a liaison officer from customs should be sent from BiH to the SECI Center.

5.3. RECOMMENDATIONS ON GOOD PRACTICES

Recommendation n. 10

'Enabling new state institutions to fulfil their centralisation role'

Background and rationale

New state institutions (Court of Bosnia and Herzegovina and SIPA) have been recently formed for the purposes of international police and judicial cooperation. However, these institutions are not yet operational due to the lack of material resources such as offices and personnel. This lack of implementation might represent an obstacle to international cooperation, because without a central authority it is difficult to correctly address assistance requests and identify counterpart colleagues if a direct contact is not already in place.

Recommendation

Action should be taken to enable new state institutions with material instruments to carry out their role.

Implementing measures

- Funds should be allocated for staffing the new state institutions and providing them with adequate offices and instruments.
- Particular attention should be devoted to issues regarding the availability of translators, technical means for securely exchanging information and the standardisation of assistance requests.

Recommendation n. 11

'Making the new centralised database work'

Background and rationale

The Court of Bosnia and Herzegovina is now obliged to keep a centralised system of data on any criminal offences and perpetrators. In addition this database should contain any valid verdict concerning criminal offences of the production and circulation of false money, unauthorized production, processing and trade in drugs and poison, human trafficking, dissemination of pornography as well as criminal offences for which international agreements foresee a centralization of data. However this database is not yet running and the old database systems are inadequate to provide an effective communication of information on organised crime, because they contain information on persons wanted in BiH for participating in organised criminal groups, but no information on persons convicted for the same crime. In any case, they are not directly accessible by foreign police officers.

Recommendation

Action should be taken to make the new centralised database work.

Implementing measures

- Funds should be allocated for building up a technologically well equipped database.
- The experience of other countries and organisations in setting up databases on organised crime (Italy, Eurojust, etc.) should be exploited in order to build this database.

8.3

BULGARIA¹⁸¹

INTRODUCTION

Bulgaria has been a Republic since 1947. In 1990 it held its first multiparty election and became a parliamentary republic. It joined the UN on 15 December 1955 and the Council of Europe on 7 May 1992.¹⁸²

The Bulgarian Constitution was adopted in 1991 and the criminal law code and criminal procedure code entered into force respectively in 1968 and in 1975. The CCP has undergone more than 20 reforms, which have greatly modified its structure. In particular the reform of 1999 introduces important elements taken from the accusatorial tradition, such as cross-examination, equality of the parties in front of the judge, the 'passive' function of the judge, the 'oral proceedings' principle, and alternative means of concluding the trial.¹⁸³

Also the criminal code has been recently amended to further facilitate the fight against crime with provisions on money laundering (State Gazette n. 26/2004), organized crime and trafficking of human beings (State Gazette n. 92/2002). Other sources of important legislation on criminal law and procedure are the Law on Special Means of Investigation of 1994, amended in 1997 (State Gazette n. 95/1997), and the Law on Combating the Illegal Trafficking in Human Beings (State Gazette n. 46/2003) in force since 1st January 2004. Furthermore, the Council of Ministers of the Republic of Bulgaria recently approved a bill concerning the confiscation of property acquired through criminal activity and a bill for protecting persons threatened in connection with criminal proceedings.¹⁸⁴

In Bulgaria, according to *Judicial Law* (published in SG n. 59/1994) and the Code of Criminal Procedure, the judicial authorities are the court of law, the public prosecutor's office and the investigative services (the National Investigative Office and the District Investigative services), respectively judges, public prosecutors and

¹⁸¹ The Bulgarian country profile is based, among other materials, on the answers given by the following experts: Mr. Petar Vladimirov, Head of Division, Counter Organised Crime, Sofia; Mrs Velcheva, Expert, Supreme Cassation Prosecutor's Office, International Relations Dept., Sofia; Mrs Pavlina Nikolova, Prosecutor, Supreme Cassation Prosecutor's Office, Sofia; Mr Petar Petkov, Prosecutor, Supreme Cassation Prosecutor's Office, Sofia; Kalin Dimitrov, Prosecutor, Sofia Regional Prosecution Office, Sofia; Anton Gyurov, Prosecutor, Supreme Cassation Prosecution Office, Sofia; Nikola Manev, Expert, Supreme Cassation Prosecution Office, Sofia. They answered to two questionnaires: one in autumn 2002 and one in summer 2003. The final revision and updating was carried out by Mr. Petar Vladimirov, Mr Petar Petkov, Kalin Dimitrov, and Mrs Pavlina Nikolova in May 2004.

¹⁸² Detailed information on the main Bulgarian democratic institutions and its judiciary is available at: <http://www.legislationline.org>. See also Central Intelligence Agency (CIA), *The World Factbook 2003*, available at <http://www.cia.gov/cia/publications/factbook/index.html> (last verified in January 2003)..

¹⁸³ B. Pavišić and D. Bertaccini, *Le altre procedure penali. Transizioni dei sistemi processuali penali*, Vol. I, cit., p. 121–183.

¹⁸⁴ A detailed discussion of all these new provisions is provided below in paragraph 2.1 and 2.2.

investigators. Investigators are magistrates who carry out the preliminary investigations in criminal cases.

As to specialised law enforcement structures, a police intelligence unit, called the 'National Service for Combating Organised Crime' (NSCOC) has been established in Bulgaria to carry out investigations into organised crime and criminal activities typically related to organised crime. According to the Bulgarian Constitution and CCP, the investigation can only be carried out by the National Investigation Service which functions outside of MOI and within the Judicial authority.

1. THE ORGANISED CRIME SITUATION

The transition from a centrally planned economy to a market economy led not only to an increase of the criminal activities, but also their nature changed. 'Conventional crime' was in fact placed under the auspices of organised crime and became a function of it.¹⁸⁵

1.1. FEATURES OF THE ORGANISED CRIMINAL GROUPS

In Bulgaria there are more than 50 criminal groups, which are composed, on average, of less than 10 members. They are mostly made up of a mixture of national and non-national members. Some foreign groups are also present and operating in the country, mainly in cooperation with national groups.

Non-nationals taking part in the Bulgarian criminal scene are mainly Albanians (from Western Macedonia and the Federal Republic of Yugoslavia), Kurds from Turkey, Syria and Iraq), Moldavians, Armenians, Russians and Ukrainians. Turkish groups are active in drug trafficking in Bulgaria, seemingly in cooperation with local organised crime rings. Law enforcement authorities have also noticed the increasing participation of ethnic Albanians in drug trafficking. In 2001 30% of the traffickers arrested in Bulgaria were of Albanian origins.¹⁸⁶

These groups generally adopt both sophisticated hierarchical structures¹⁸⁷ and horizontal structures. The latter means that centralised leadership is often lacking or weak and that middle level operators have autonomy in organising their own 'projects' and are not controlled by top level actors.

The groups operate on both a national and transnational scale. The presence of Bulgarian criminal actors has been detected in Albania, the Czech Republic, FYROM,

¹⁸⁵ 'Organised crime has allegedly become a part of Bulgarians' everyday life since 1989. Starting out as a national phenomenon, it established contacts with foreign, mostly transnational criminal organisations, thus involving the country in the global process of transnational organised crime'. See B. Stankov, *Crime in Bulgaria and its Victims*, Sofia, 1999, p. 96 and p. 105.

¹⁸⁶ This data can be found on the site of the national crime squad of the UK police at the following address: http://nationalcrimesquad.police.uk/Hot_Off_The_Press/info/91_drugs_&_org_crime (last verified in January 2003).

¹⁸⁷ An hierarchical structure is present mostly in drug (heroin) organisations, which also have a very large number of participants. However, the market for 'soft drugs' (cannabis) remains divided between independent small dealers. See Centre for the Study of Democracy, *The Drug Market in Bulgaria*, Sofia 2003, p. 34, available at: <http://www.csd.bg/bg/fileSrc.php?id=181> (last verified on 8 April 2004).

FRY, Hungary, Moldova, Slovenia, Turkey and also in some EU countries such as Germany, Greece, Italy, the Netherlands, Spain, Sweden and the UK. In all these countries, the groups seem to act in accordance and cooperation with local groups.

OC groups also infiltrate in the following economic sectors: casinos, construction, financial, legal professions, nightlife services, real estate, tourism, whole sale trading, fast moving goods.

1.2. ACTIVITIES OF THE ORGANISED CRIMINAL GROUPS

Bulgarian organised criminal groups are very active in a wide range of criminal activities which affect many of the EU countries.¹⁸⁸ For instance, criminal groups operating mainly in the drug market are also deeply involved in other activities as varied as illegal immigration, trafficking of stolen cars and the export of archaeological artefacts.¹⁸⁹

Organised crime seems to be significantly involved in the **traffic of psychotropic substances** of various kinds,¹⁹⁰ and heroin in particular. Bulgaria's strategic position on the Balkan routes between Turkey, Romania and Serbia, makes it vulnerable to drug transit in both directions. The country is first of all a well developed transit point for heroin produced in the Golden Crescent and South West Asia and it is estimated that 80% of the heroin distributed in Europe is first transported through Bulgaria.¹⁹¹ The country is also a transit point for the precursors used to produce heroin. Precursor chemicals come from former Yugoslavia and are moved mainly to South–West Asia through Turkey and beyond.¹⁹²

Specifically, heroin is moved through Bulgaria before proceeding on its way to Western markets either via Serbia and Montenegro and FYROM, or via Romania. One report states '*in the busiest months some 1,000 vehicles cross every day from Turkey into Bulgaria on their way to European destinations*'.¹⁹³ The number on

¹⁸⁸ 'Europol: Organized Crime in Bulgaria Threaten EU', 19 December 2003, available on the Novinite News site at: http://www.novinite.com/view_news.php?id=29191 (last verified on 8 April 2004). See also Europol, *2003 European Union Organised Crime Report*, Luxembourg, 2003, available on the Europol site at: [http://www.europol.eu.int/publications/EUOrganisedCrimeSitRep/2003/EUOrganised CrimeSitRep2003.pdf](http://www.europol.eu.int/publications/EUOrganisedCrimeSitRep/2003/EUOrganised%20CrimeSitRep2003.pdf) (last verified on 8 April 2004).

¹⁸⁹ Centre for the Study of Democracy, *The Drug Market in Bulgaria*, cit., p. 40.

¹⁹⁰ Bulgaria is a transit point for marihuana and cocaine. See U.S. Department of State, *The World Factbook 2003*, 18 December 2003, at: <http://www.cia.gov/cia/publications/factbook/geos/bu.html> (last verified on 8 April 2004). Recently, law enforcement agents have discovered increasing amounts of Brazilian cocaine within the borders of the country. Moreover, according to recent US government sources, synthetic drugs have recently become the main drug transported through Bulgaria. See US Department of State, *International Narcotics Control Strategy Report 2003*, March 2004, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2003/vol1/html/29838.htm> (last verified on 8 April 2004).

¹⁹¹ U.S. Department of State, *International Narcotics Control Strategy Report 2003*, cit.

¹⁹² Ibidem.

¹⁹³ U.S. Government, *International Crime Threat Assessment Report*, Washington DC, December 2000, p. 65.

'normal traffic days' is about 700.¹⁹⁴ In 2000 law enforcement agents seized 2,067 kg of heroin, which amounted to 3% of the total seizures made around the world in the same year.¹⁹⁵ In 2001 Bulgarian law enforcement agents seized as much heroin as all other European countries combined.¹⁹⁶ The decrease in 2002 drug seizures (a total of 663.8 kilograms from January to December 15, 2002) made analysts believe that the Bulgarian anti-drug trafficking efforts were fruitful,¹⁹⁷ but a more recent report by US Department of State indicates a sharp increase in drug seizures in 2003 (1,074 kilograms of drugs from January to September 2003).¹⁹⁸ Additionally, on 5 September 2003 a heroin haul of 128 kilograms was seized at the Danube Bridge, this represents one of the largest seizures ever made at that particular border crossing.¹⁹⁹

National organised groups involved in drug trafficking are often paid in kind by the other international organised groups taking part in the operations. This explains the relatively large quantity of heroin present in the country and the drug abuse among traffickers themselves. This supply of drugs also tends to create a market because Bulgarian traffickers try to sell the drugs they receive as payment within the borders of the country.²⁰⁰

According to SECI data, during 2003 29 shipments with narcotic substances were seized at the borders of the Republic of Bulgaria.²⁰¹

Bulgarian organised crime also seems to be active in **producing drugs**. Although the demand from the internal market is still moderate,²⁰² both opium poppies and

¹⁹⁴ 'Customs target Bulgaria to Stem Heroin Flow', 21 February 1998, available on the *BBC News* site at: <http://news.bbc.co.uk/1/hi/uk/58722.stm> (last verified on 8 April 2004).

¹⁹⁵ Office for Drug Control and Crime Prevention (ODCCP), *Global Illicit Drug Trends*, United Nations, New York, 2002, p. 94.

¹⁹⁶ Economic and Social Council, Commission on Narcotic Drugs, *World Situation with Regard to Illicit Drug Trafficking*, Report of the Secretariat, Vienna, 20 January 2003, p. 15, available at: http://www.unodc.org/pdf/document_2003_01_20_1.pdf (last verified on 8 April 2004).

¹⁹⁷ *Ibidem*.

¹⁹⁸ U.S. Department of State, *International Narcotics Control Strategy Report 2003*, cit.

¹⁹⁹ 'Turkish National Convicted in Largest Heroin Haul 2003', in *Bulgarian News Agency*, 16 February 2004, available at: http://newsweb.bta.bg:8080/newsweb/enfree/news_view.asp/freenews16-02-2004_FBB_en_341406910.txt.txt?id=341406910 (last verified on 8 April 2004).

²⁰⁰ U.S. Department of State, *International Narcotics Control Strategy Report 2002*, 2003, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2001/rpt> (last verified on 8 April 2004).

²⁰¹ The operations carried out on the international road E 70 in April 2003 resulted in the seizure of 157 kilograms of marijuana, 17.946 kilograms of opium, 0.681 kilograms of cocaine and 2,063 pills and ampoules of steroid substances. In 2003 during the course of the Orient-Express operation implemented along SECI lines in Bulgaria 24.440 kilograms of amphetamines, and 58,880 marijuana cigarettes with were seized. In the period June-July 2002 during the SECI SPEEDWAY operation of regarding motor vehicles in the Republic of Bulgaria, seized 124 kilograms of heroin, 32.6 kilograms of marijuana, 45.72 kilograms of amphetamines, 6,838 pills with psychotropic substances and 1800 ampoules with tranquilizers /opiates.

²⁰² In an analysis of drug distribution made by the Centre for the Study of Democracy it appears that the domestic drug market is not coherently organised, 'rather, the largest cities - Sofia, Plovdiv, Varna and Bourgas - operate as independent local markets. Each of them is dominated by three or four criminal organisations. The current Sofia drug market is the result of continuous clashes and agreements between separate groups. A typical organisation included a 'boss' having between 5 and 20 'street dealers'.

cannabis are grown in Bulgaria. Clandestine laboratories producing amphetamine based drugs, above all ecstasy, are said to be present on the territory. One laboratory producing amphetamines was shut down in 2000 and 419 kg of amphetamine-type stimulants were seized and until 2003, 13 amphetamine laboratories were found.²⁰³

Ecstasy consumption has been growing in recent years, mainly among university students.²⁰⁴ The increased local demand for heroin, cocaine, cannabis and amphetamines has been testified to by statistics, which report a large increase in drug abusers in the years 1998 – 2000.²⁰⁵

The increasing use of synthetic drugs has been recognised by organised criminal groups that previously only dealt with supplying heroin and they have now begun to merge with groups dealing with synthetic substances.²⁰⁶

As far as **human trafficking** is concerned Bulgaria tends to be a source, transit country, and, to a lesser extent a destination country.²⁰⁷ Human trafficking mainly consists of trafficking of women for prostitution purposes. The victims trafficked through the country come primarily from the Ukraine, Moldova, Romania, Russia, Latvia and Lithuania. They are on route towards a wide array of places, not only within European borders: Greece, Italy and Austria, with secondary destinations being Turkey, FYRoM, Poland, the Czech Republic, Cyprus Albania, Bosnia, Denmark, France, Kosovo, Germany, Greece, the Netherlands, Poland, South Africa, Spain and Turkey.²⁰⁸ Bulgaria is, therefore, a crucial crossroads for traffickers.²⁰⁹

Negotiations among groups led to the principle of zoning with areas of influence coinciding with the police district structure. See Centre for the Study of Democracy, cit., p. 32–34.

²⁰³ Office for Drug Control and Crime Prevention (ODCCP), *Global Illicit Drug Trends*, cit., p. 68 and p. 168. Centre for the Study of Democracy, *The Drug Market in Bulgaria*, cit., p. 36.

²⁰⁴ U.S. Department of State, *International Narcotics Control Strategy Report 2003*, cit.

²⁰⁵ Narcotic Drugs Council, *Bulgarian National Focal Point on drugs and Drug Addiction Problems in Bulgaria*, 2001, available at: <http://candidates2002.emcdda.eu.int/2002-ceecs-report/section-2-about-ceecs/Aa-per-country/Aa-1-bulgaria.shtml> (last verified on 8 April 2004). However US sources report that cocaine remains too expensive and is used only by the wealthy, whereas marijuana is used in rural areas. In general drug consumption is particularly widespread among Gipsies. U.S. Department of State, *International Narcotics Control Strategy Report 2003*, cit.

²⁰⁶ Centre for the Study of Democracy, *The Drug Market in Bulgaria*, cit., p. 35–36.

²⁰⁷ European Commission, *2003 Regular Report on Bulgaria's Progress towards Accession*, 2003, p. 21, at: http://europa.eu.int/comm/enlargement/report_2003/pdf/rr_bg_final.pdf (last verified on 8 April 2004). See also UNICEF/UNOHCHR/OSCE – ODIHR, *Trafficking in Human Beings in South Eastern Europe–Update*, UNICEF, 2003, at: http://www.osce.org/documents/odihr/2003/12/1645_en.pdf (last verified on 8 April 2004), and UNICEF/UNOHCHR/OSCE – ODIHR, *Trafficking in Human Beings in South Eastern Europe*, UNICEF, 2002, at: <http://www.unhcr.ch/women/trafficking.pdf> (last verified on 25 March 2004).

²⁰⁸ UNICEF/UNOHCHR/OSCE – ODIHR, *Trafficking in Human Beings in South Eastern Europe*, cit., p. 51. See also Lehti M, *Trafficking in women and Children in Europe*, HEUNI Paper n. 18, Helsinki 2003, p. 23–24, available at: <http://www.heuni.fi/uploads/to30c6cjxyah11.pdf> (last verified on 25 March 2004). In addition, see U.S. Department of State, *Trafficking in Persons Report*, June 2003, available at <http://www.state.gov/g/tip/rls/tiprpt/2003/21275.htm> (last verified on 8 April 2004), p. 38.

²⁰⁹ During 2003 in the MIRAGE operation carried out along SECI lines in Bulgaria, 2435 places suspected to be centres for organizing the trafficking of people were checked and 27 victims of trafficking were identified. Assistance was provided to 12 of them. As a result of the operation 205 drug dealers were

To a small extent, Bulgaria has started developing an internal sex market within its borders, due to its relatively better economic situation.²¹⁰ In recent years girls of Romanian origin and women from the Former Soviet Union have been reported working as prostitutes in the southern part of the country.²¹¹ The women recruited in Bulgaria²¹² generally come from different border areas, particularly from the South and South Western part of the country, such as Blagoevgrad, Kyustendil, Kurdjali and Petrich. The latter is an area that has been deeply infiltrated by organised crime; groups operating in Petrich are not only active in human trafficking but also in other fields such as prostitution, drugs and vehicle trafficking. These groups use different recruitment methods, but usually contact the girls directly or through their peers and avoid contact with the girls' families. The only exception to this takes place with families of the Roma minority (an ethnic group over-represented among the Bulgarian victims of trafficking) that are contacted by traffickers and sometimes sell the girls to them. Organised criminals also set up work agencies where they lure the girls by offering them non-existent jobs abroad as dancers, models, *au pairs*. Lastly, traffickers may resort to extreme methods such as kidnapping, imprisonment, rape, the withholding of documents and earnings to ensure their victims' compliance.²¹³

A significant problem in human trafficking remains the complicity of law enforcement and customs agents: some of them are in fact, reported as 'turning a blind eye' towards smuggling and human trafficking.²¹⁴ In other cases police officers have even actively supported criminal activities by returning women who escaped to brothels.²¹⁵

The **trafficking of weapons** also takes place in Bulgaria and organised criminal groups play a role in it. Illegal weapons are mainly acquired in two ways: either they are stolen from military stockpiles (sometimes with the complicity of people working in the army), or they come from small illicit factories, which produce weapons and then sell them to organised crime groups or smuggle them.²¹⁶ Entry

identified and 28 criminal proceedings were instituted by Bulgarian judicial authorities. By the end of 2003 the Public Prosecutor's Office of Bulgaria submitted to the Court of law bills of indictment against 6 persons. As to the rest of the criminal proceedings, investigations are continuing.

²¹⁰ UNICEF/UNOHCHR/OSCE – ODIHR, *Trafficking in Human Beings in South Eastern Europe–Update*, p. 52–53. See also D. Binder, 'Once a Transit Country, Bulgaria is now a Sex Slave Destination', in *MSNBC News*, 2004.

²¹¹ UNICEF/UNOHCHR/OSCE – ODIHR, *Trafficking in Human Beings in South Eastern Europe*, cit., p. 51 –52.

²¹² According to NGOs there are about 10,000 Bulgarian prostitutes working in brothels abroad. See M. Hajdinjak, *Smuggling in Southeast Europe*, CSD Report, Sofia, 2003.

²¹³ UNICEF/UNOHCHR/OSCE – ODIHR, *Trafficking in Human Beings in South Eastern Europe*, cit., p. 51 –52. See also US Department of State, *Trafficking in Persons Report*, June 2003, p. 38, available at <http://www.state.gov/g/tip/rls/tiprpt/2003/21275.htm> (last verified on 8 April 2004).

²¹⁴ US Department of State, *Trafficking in Persons Report*, cit.

²¹⁵ Transparency International (TI), *Global Corruption Report*, 2003, p. 194, available at: [http://www.globalcorruptionreport.org/download/gcr2003/18_Southeast_Europe_\(Jovic\).pdf](http://www.globalcorruptionreport.org/download/gcr2003/18_Southeast_Europe_(Jovic).pdf) (last verified on 8 April 2004).

²¹⁶ 'Money Talks. Arms Dealing with Human Rights Abusers', in *Human Rights Watch*, vol. 11, n. 4, April 1999, available at: <http://www.hrw.org/reports/1999/bulgaria> (last verified on 8 April 2004).

into NATO indirectly made available large quantities of surplus weapons, thus offering possibilities of exporting these arms.²¹⁷ On 26 August 2002 it was reported that national law enforcement officers investigating an organised criminal group active in the field of extortion and murder for hire, seized 50 kilograms of explosives, 30 hand grenades, electric fuses and a huge quantity of rifles of different kinds.²¹⁸ This is also an area which is widely acknowledged to carry a high risk of bribery of foreign public officials.²¹⁹

Bulgaria is a transit and destination country for **cigarettes** smuggled chiefly from Cyprus. In 1999, the value of legally imported cigarettes in Bulgaria amounted to US\$ 5.5. million, which is only 14.1% of all the cigarettes imported. This means that a massive amount of cigarettes brought into the country are illegally imported.²²⁰ In 2000 12 seizures were made which led to the confiscation of a total of 66,734,000 cigarettes.²²¹ A large amount of cigarettes just transit through Bulgaria and are destined for Western markets, mainly Germany and the UK.

Organised criminals also seem to be involved in **vehicle smuggling**.²²² Cars stolen in Western Europe are smuggled to Bulgaria with counterfeit documents. Organised criminals also steal cars in Bulgaria and smuggle them to other countries. Three main trafficking channels have been discovered, that end in or start in Bulgaria. The first channel is called the 'Vienna' channel: cars are usually smuggled from Italy, Germany and Austria and are sold in Bulgaria. The second channel is called the 'Russian or Moldavian channel', through which cars stolen in Bulgaria are smuggled to the CIS. The last channel is called the 'Macedonian channel', through which cars stolen in Bulgaria are trafficked to FYRoM and Albania.²²³ In 1998 1,283 persons were arrested for stealing vehicles in Bulgaria.²²⁴

²¹⁷ 'Arms Trade, Human Rights, and European Union Enlargement: The Record of Candidate Countries', in *Human Rights Watch Briefing Paper*, 8 October 2002, available at: http://www.hrw.org/backgrounder/arms/eu_briefing.pdf (last verified on 8 April 2004).

²¹⁸ R. Kupchinsky, 'Police break up Contract Murder Ring', in *Crime and Corruption Watch*, vol. 2, n. 31, 6 September 2002, available at: <http://www.rferl.org/corruptionwatch/2002/09/31-060902.asp> (last verified on 8 April 2004).

²¹⁹ OECD – Working Group on Bribery in International Business Transactions (CIME), Bulgaria: Phase 2 – Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendations on Combating Bribery in International Business Transactions, 6 June 2003, p. 23.

²²⁰ E. Tsenkov, 'Tobacco: Big Business in the Balkans', in *The Balkan Times*, 7 February 2002, available at: <http://www.balkantimes.com/html2/english/020207-EMIL-001.htm> (last verified on 8 April 2004).

²²¹ Regional Intelligence Liaison Office for Western Europe, *Lasso 2000. Review on Cigarette Smuggling in Europe*, Cologne, 2000, p. 23.

²²² 'Organised criminals are major players in international vehicle crime across the EU, especially in the theft of vehicles trafficked to Bulgaria and the Middle East'. Europol, 2003 European Union Organised Crime Report, Luxembourg, 2003, available on the Europol site at: <http://www.europol.eu.int/publications/EUOrganisedCrimeSitRep/2003/EUOrganisedCrimeSitRep2003.pdf> (last verified on 8 April 2004), p. 18.

²²³ S. Adamoli, 'Organised Crime and Money Laundering Trends and Countermeasures: a Comparison Between Western and Eastern Europe', paper presented at the *Training Seminar on Money Laundering in the Baltic Sea region*, Vantaa, 22 – 26 February 1999, p. 7.

²²⁴ European Committee on Crime Problems (CDCP), Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime, *Report on the Organised Crime Situation in Council of Europe*

Other **smuggling** operations, such as petrol smuggling and the smuggling of cultural artefacts, contribute to the increase of dirty money and the building up of an organised criminal net with the participation of Bulgarian criminal groups.²²⁵

Bulgarian organised criminal groups are also very active and skilled in **counterfeiting** currencies (especially Euros) and in forging credit cards and other documents often used for illegal immigration purposes.²²⁶ In the summer of 2002 an international ring of money and visa counterfeiters was discovered by a law enforcement operation managed by the Bulgarian National Service for Countering Organised Crime. The group was made up of 11 individuals. They used a shop in Varna as base for their operations. In the shop 1 million fake US dollars were found, together with a plate for fake EURO manufacture.²²⁷ According to prosecutorial sources, in 2003, in Varna a group of 3 persons producing false currency was caught red-handed. Equipment, as well as 220 banknotes to the value of 200 euros and 600 to the value of 100 euros were seized. The investigation into the case is continuing.²²⁸

Currency and visas are not the only counterfeited goods produced in Bulgaria:²²⁹ Involvement in activities such as bank fraud and computer crimes, including Internet fraud, has also been alleged. The country has been reported as being the second largest producer of counterfeit CDs in the world in 2000.

Two different reports published in October 2003²³⁰ and early 2004²³¹ reveal that **corruption** is still perceived to be a serious problem in Bulgaria. Considering that many organised criminal activities concern smuggling or trafficking, it is possible that organised criminals bribe customs officers and police officers to 'to turn a blind eye' towards some of their activities. Moreover, it is also likely that they try to obtain the favour of public prosecutors and judges in order to obtain impunity or lower sentences for their crimes. In fact, reports confirm that the Customs Service is

Member States, Council of Europe, Strasbourg, December 2000, available at: http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/Organised_crime/Documents/Report1999E-2.pdf (last verified on 8 April 2004), p. 77.

²²⁵ 'The contraband channels across Bulgaria continue to function and it is estimated to generate around 1 billion USD of dirty money annually'. Centre for the Study of Democracy, *The Economy of Crime. Discussion Topics*, Sofia: November 2002, p. 3-4, available at: http://new.cds.bg/news/infecon/ideology_En.pdf (last verified on 9 April 2004).

²²⁶ NCSI, *Organised Immigration Crime*, 2003, p. 40, at: <http://www.ncsi.co.uk/ukta/2003/ukta2003.pdf> (last verified on 9 April 2002). See also Europol, *2003 European Union Organised Crime Report*, cit.

²²⁷ *Russian Secret Services Help to Cut Short Activity of Counterfeiters' Group in Bulgaria*, published 30 July 2002 at the Pravda News and Analysis On - Line Publications site: <http://english.pravda.ru/diplomatic/2002/7/30/33469.html>

²²⁸ Other cases of organized groups for counterfeiting and forging currency and credit and debit cards for the period 2001-2003 were reported in the cities of Plovdiv, Silistra and Sofia.

²²⁹ US Government, *International Crime Threat Assessment Report*, Washington DC, December 2000, cit.

²³⁰ Vitosha Research, *Corruption Monitoring by Coalition 2000*, October 2003, p. 7, available at: <http://www.vitosha-research.com/corind/october03e.pdf> (last verified on 9 April 2004).

²³¹ Centre for the Study of Democracy, *Corruption Assessment Report 2003*, Sofia 2004, p. 5, <http://www.csd.bg/fileSrc.php?id=357> (last verified on 9 April 2004).

perceived to be the most corrupt government agency, even if no evidence has yet been found to support this perception.²³²

According to the financial Intelligence Agency (FIA), suspicious transaction reports rose considerably in 2002 and also in the first ten months of 2003.²³³ Organised criminals allegedly **launder** their proceeds within the borders of the country by illicitly exploiting the financial system in the placement stage, the layering stage and the integration stage. Most of the proceeds laundered in Bulgaria come from drugs, human trafficking and financial and organised crimes (fraud, embezzlement, tax evasion, smuggling prostitution and extortion).²³⁴ In 1999 law enforcement agents stopped a money-laundering scheme through which 19 persons, allegedly linked to organised crime groups, siphoned more than US\$30 million through 9 Bulgarian banks. In the scheme many fake companies were set up and accounts were opened in their names.²³⁵ Recently growing alarm has been raised regarding the exploitation of the wheat market by organised crime for laundering purposes.²³⁶ It is reported that several foreign Eastern European criminal groups also launder money in Bulgaria.²³⁷ The fast movement of goods in wholesale trade is also used to launder money: the goods are transferred from one company to the other until the paper trail can no longer be followed and the goods 'disappear'. Some professionals such as lawyers and notaries also seem to be involved in money laundering and in the criminal infiltration of legitimate markets.

In 2003 40 criminal proceedings pursuant to the Article 253 from the Criminal Code of the Republic of Bulgaria were initiated by the Public Prosecutor's Office for the money laundering offence in different stages of the process of laundering the proceeds of the predicate crime. The investigation is being carried out by examining magistrates from the National Investigative Office. In three of the cases bills of indictment were prepared and submitted to the Court.

²³² U.S. Department of State, *International Narcotics Control Strategy Report 2003*, cit. See also OECD/OCDE, *Bulgaria: Phase 2. Report on the Application of the Convention on Combating Bribery of Foreign Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions*, 6 June 2003, available at: [www.oecd.org /dataoecd /18/19/2790505.pdf](http://www.oecd.org/dataoecd/18/19/2790505.pdf) (last verified on 9 April 2004).

²³³ European Commission, *2003 Regular Report on Bulgaria's Progress towards Accession*, cit. See also U.S. Department of State, *International Narcotics Control Strategy Report 2003*, cit.

²³⁴ U.S. Department of State, *International Narcotics Control Strategy Report 2003*, cit. See also the Bulgarian Country Profile published on the FATF web site at: http://www1.oecd.org/fatf/Ctry-orgpages/ecry-bu_en.htm (last verified on 9 April 2004).

²³⁵ 'Bulgaria Smashes Money Laundering Ring', 9 October 1999, available at the site of *BBC World Service*: <http://www.bbc.co.uk/1/hi/world/europe/469637.stm> (last verified on 9 April 2004).

²³⁶ 'Money Laundering and the Wheat Market', published 27 August 2002 in *International Edition of Standart News* at: <http://standartnews.mntel.net/archive/2002/08/27/english.moneyt/> (last verified on 9 April 2004). See also: R. Kupchinsky, 'NGO Alleges Money Laundering by Grain Traders', in *Crime and Corruption Watch*, cit.

²³⁷ U.S. Department of State, *International Narcotics Control Strategy Report 2002*, cit.

2. LEGISLATION AND PRACTICES

2.1. CRIMINAL LAW

Bulgaria has signed and ratified most of the relevant international and specific European instruments against organised crime: the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (ratified on 24.09.1992), the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ratification on 01.10.1993), the 1999 Council of Europe Criminal Law Convention on Corruption (ratified on 07.11.2001), the United Nations Convention against Transnational Organised Crime and its Protocols (ratified on 05.12.2001).

Accordingly, the Bulgarian criminal code criminalizes all the main forms of organized criminal activities and has recently been amended (see *Introduction*) to harmonize criminal definitions with European and international standards.

Legal gaps persist, however, the most evident of which is the absence of provisions related to the liability of legal persons. A special administrative procedure code is currently being developed, which will include provisions for the penal liability of legal persons.

Also the correspondence of the existing literal provisions to international standards is not uniform for all the relevant criminal activities.

Money laundering is criminalized by art. 250 and 253 CC.²³⁸ These provisions have been reviewed by Council of Europe examiners, who found the elements of material

²³⁸ Art. 250 (amended by State Gazette No.95 of 1975, amended and complemented by No. 28 of 1982, No.89 of 1986, rescinded, No.10 of 1993, new, No.50 of 1995, former text of Art.250, No.21 of 2000): (1) Whoever remits sums abroad by way of banking operation using a forged, falsified document or a document with untrue content shall be punishable by deprivation of freedom for one to ten years and by a fine up to an amount double the sum of the remittance. (2) (New – State Gazette No. 21 of 2000) The punishment shall be deprivation of freedom for five to fifteen years and a fine up to an amount double the sum of the remittance made, if the perpetrator was aware or supposed that the sums were acquired through the illicit traffic of narcotics and/or of their analogues, and/or of their precursors.

Art.253 (amended by State Gazette No.28 of 1982, rescinded by No. 10 of 1993, new, No. 62 of 1997 amended., SG No 26/2004): (1) (amended by State Gazette No. 85 of 1998, am., SG No 26/2004). (1) Whoever performs financial operation or transaction with property or conceals or disguises the true nature, location, movement or rights with respect to property, knowing or supposing that such property is acquired through crime shall be punishable for money laundering by deprivation of liberty for one to six years and a fine from three thousand to five thousand levs. (2) (New, SG No 26/2004) The punishment under paragraph 1 shall be imposed to anyone who acquires, receives, possesses, uses, transforms or helps in any way the transformation of property knowing or supposing at the time of its receiving that such property is acquired through crime. (3) (Am., SG No 26/2004) The punishment shall be deprivation of liberty for one to eight years and a fine from five thousand to twenty thousand levs if the crime under paragraphs 1 and 2 is perpetrated by: 1. by two or more persons who have conspired in advance or by a person who is acting following the instructions or decisions of an organized crime group; 2. twice or more times; 3. by a public official acting within the scope of his competence; 4. (New, SG No 26/2004) by opening or maintaining an account in a financial institution under false name or under the name of another person who has not given permission to use it. (4) (Am., SG No 26/2004) The punishment shall be deprivation of liberty for ten to thirty years and a fine from twenty thousand to two hundred thousand levs when the perpetration under paragraphs 1 and 2 is done with funds or property about which the perpetrator knew or supposed that were acquired through illegal trafficking in drugs and/or their analogues, and/or precursors. (5) (Am., SG No 26/2004) When the funds or property are in particularly large amounts and the case is especially serious,

conduct ('all crime approach') and the harsh penalties inflicted to be adequate. Recent amendments to the Criminal Code further introduce more precise regulation concerning money laundering in compliance with the Strasbourg convention (State Gazette No 26/2004).

The legal definitions of 'trafficking in human beings' (art. 159 a, 159 b, 159 c CC)²³⁹ and 'participation in a criminal association' (art. 321 CC, art. 321a CC, and other provisions included in the special part of the criminal code)²⁴⁰ have recently been

the punishment shall be deprivation of liberty for three to twelve years and a fine from ten thousand to two thirty thousand levs and the court shall also deprive the sentenced person of civil rights as per art. 37, paragraph 1, points 6 and 7. (6) (Am., SG No 26/2004) The object of the crime or the property into which it has been transformed shall be forfeited to the State and when it is missing or has been disposed of, its equivalent value shall be adjudicated. (7) (New, SG No 26/2004) Paragraphs 1 – 6 shall apply even when the predicate offence was not subject to the criminal jurisdiction of the Republic of Bulgaria.

Art. 253a (New, SG No 26/2004): (1) The preparation or conspiracy for money laundering shall be punished by deprivation of liberty up to two years or by a fine from five thousand to ten thousand levs. (2) The punishment under paragraph 1 shall be imposed to anyone who instigates another person to commit money laundering. (3) The funds or property intended to be laundered are forfeited to the State and when they are missing or have been disposed of, their equivalent value shall be adjudicated. (4) Any person participating in the conspiracy under paragraph 1 shall not be punished if he leaves the group or informs the competent authorities before the crime has been completed.

²³⁹ Art. 159a: (1) Persons who select, transport, hide, or receive individuals or groups of persons for the purpose of using them for acts of debauchery, compulsory labour, removing their organs, or keeping them in forceful subordination, irrespective of their consent, shall be punished with imprisonment of one to eight years and a fine not exceeding eight thousand Levs. (2) Acts under paragraph 1 committed: against persons under eighteen; by using force or misleading the person; by abduction or unlawful deprivation of liberty; by taking advantage of a position of dependency; by abuse of power; by promising, giving, or receiving benefits, shall be punished with imprisonment of two to ten years and a fine not exceeding ten thousand Levs.

Art. 159b: (1) Persons who select, transport, hide, or receive individuals or groups of persons and take them across the frontiers of the country for the purposes specified under Article 159a, paragraph 1 shall be punished with imprisonment of three to eight years and a fine not exceeding ten thousand Levs. (2) In case the act under the preceding paragraph is committed under the conditions of Article 159a, paragraph 2 the punishment shall be imprisonment of five to ten years and a fine not exceeding fifteen thousand Levs.

Art. 159c: (1) When the act under the preceding Articles constitutes a case of dangerous recidivism has been committed following an order or in implementation of a decision of an organized criminal group the punishment shall be five to fifteen years of imprisonment and a fine not exceeding twenty thousand Levs, whereas the court may also rule confiscation of part or the whole of the perpetrators property.

²⁴⁰ Art. 321: (1) Whoever forms or directs a group set up with the aim of committing criminal acts in the country or abroad shall be punishable by deprivation of freedom for one to five years. (2) Whoever participates in such a group shall be punishable by deprivation of freedom for up to three years. (3) (New – State Gazette.No.62 of 1997, amended by No.21 of 2000) Whenever the group is organised or armed, or was set up with the purpose of conducting illicit traffic of narcotic substances, their analogues or precursors, or whenever a person of official standing participates in the group, the punishment shall be as follows: 1. for paragraph 1 – deprivation of freedom for five to fifteen years; 2. for paragraph 2 – deprivation of freedom for three to ten years. (4) (New – State Gazette No.62 of 1997) A participant in the group who of his/her own will surrenders to the authorities and divulges everything he/she knows about the group, shall not be punishable, provided that until then no crime has been committed by him/her or by the group. (5) (New – State Gazette No.62 of 1997) A participant in the group who, of his/her own will, surrenders to the authorities, divulges everything he/she knows about the group and thus substantially helps to expose and provide evidence for the crimes committed by the group, shall be punishable under the conditions of Art.55.

Art. 321a (New – State Gazette No.62 of 1997): (1) Whoever takes part in the leadership of an association or group that uses force or inspires fear in order to conclude deals or derive benefits, shall be punishable by

amended to follow internationally accepted standards more closely, adapting them to already existent national legislation.²⁴¹

2.2. CRIMINAL PROCEDURE

Similarly to the criminal law, also criminal procedure has recently been amended in order to comply with internationally accepted standards, especially with regard to witness protection.

Witness protection rules are now defined in art. 97a CCP²⁴² and art. 31 of the law on combating trafficking. Witnesses, and their relatives, are protected at their request or with their consent if there is a reasonable presumption of real danger to the life, health, family, relations or property of the witness because of his or her testimony. This protection consists of anonymity and the presence of guards, even if no communications technology devices (video links) are provided for. The protection is

deprivation of freedom for three to eight years. (2) Whoever participates in such an association or group shall be punishable by deprivation of freedom for up to five years. (3) Whatever the association, the group or its participants have acquired from that activity shall be confiscated in favour of the state, if the persons who have made the acquisition, or their heirs, are unknown. (4) In the cases of the preceding paragraphs the provision applied shall be that of Art.321 paragraphs 4 and 5.

²⁴¹ G. Vaz Cabral, *Opinion and Commentary on the Legal Provisions on Trafficking in Human Beings Applicable in Bulgaria*, LARA Project – Criminal Law Reform Against Trafficking in Human Beings, February 2003, p. 3. Available at: [http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Combating_economic_crime/Project_LARA/ExpOP\(2002\)18E%20-%20Bulgaria-1.pdf](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Combating_economic_crime/Project_LARA/ExpOP(2002)18E%20-%20Bulgaria-1.pdf) (last verified on 19 February 2004).

²⁴² Art. 97a. (New – State Gazette No.64 of 1997) Protection of the witness: (1) The organs of the pre-trial procedure, the reporting judge, or the court, at the request of the witness or with the witness' consent, shall take precautions for his/her protection, when sufficient grounds exist to suspect that, as a result of his testimony, a real danger has arisen or can arise for the witness' life, health or property, or for his/her direct ascending or descending line relatives, his/her brothers, sisters, husband or wife or persons of particularly close relation to the witness. (2) The protection of the witness shall be effected through: 1. keeping his/her identity in secret; 2. provision of security guards. (3) (New – State Gazette No.70 of 1999) Measures for the protection of a witness' direct ascending or descending line relatives, brothers, sisters, husband or wife or persons of particularly close relation to the witness shall be taken with their agreement or with the agreement of their legal representatives. (4) Preceding paragraph 3, amended by State Gazette No.70 of 1999) The written order of the competent authority on the protection of a witness as per paragraph 2 item 1 shall indicate: the body which issues it; the date; the person's identity particulars and ID number; the kind of measures taken and the circumstances which compel this; the signatures of the official in authority and of the person. The order, the documents and the effects deposited by such witness or confiscated from the witness shall be kept in special custody regulated by the Minister of Justice and European Legal Integration. (5) (Former paragraph 4, amended by State Gazette No.70 of 1999) Transcripts of the minutes of the testimony of the witness not bearing the signature of the witness shall be submitted without delay to the accused and his/her defence, and in the course of the trial procedure – to the parties which may pose questions in writing to the witness. (6) Former paragraph 5, amended by State Gazette 70 of 1999) The authorities of the pre-trial procedure and the court shall interrogate the witness in secret and take precautions to keep his/her identity in confidentiality. (7) (Former paragraph 6, amended by State Gazette 70 of 1999) Direct access to the protected witness shall be given to the respective authorities of pre-trial procedure and of the court, whereas the defence and his/her client – only if the witness was called upon by them. (8) (Former paragraph 7, amended by State Gazette No.70 of 1999) The measures of protection of the witness may be withdrawn at the request of the person for whose safety they were introduced, or when the need of applying them no longer exists, or by order of the authority of paragraph 1.

also granted during pretrial stages, as it is not obligatory for the witness to be called as such before the court in order to receive protection.²⁴³

Other pieces of legislation regarding witness protection are forthcoming. A bill was drafted to amend the Code of Criminal Procedure which includes additional provisions connected with witness protection. These will provide additional guarantees to protect the rights, lives and security of the persons who acquire 'protected witness' status. Furthermore, a law on the Protection of vulnerable Persons in Criminal Proceedings was enacted on 20.05.2004.

The Bulgarian confiscation regime has an 'all crime approach', which means that it is possible to confiscate the proceeds from all types of criminal offences. According to art. 53 CC,²⁴⁴ both property and value confiscation is admitted. However, there are two weaknesses in the confiscation system provided for in the Bulgarian criminal code. The first is the necessity of having a court decision establish that a criminal offence has been committed before confiscation. It is thus impossible to confiscate the proceeds of crime in the earlier stages of the proceedings. Secondly, if there is probable cause to believe that the property/money derives from a criminal offence and the owner or possessor is not able to give evidence that the property/gain was acquired legally, the national penal legislation does not allow the property/money to be confiscated, but this is possible under the civil legislation.

Finally, despite the fact that the Bulgarian Code of Criminal Procedure adopts most of the modern means of investigation (interception of telephone conversations, fax and Internet transmission, audio and video recording of events taking place on private premises, and covert methods such as controlled delivery), undercover operations are not frequently allowed (only for drug trafficking transborder cases) and the use of storefronts by investigative units is not envisaged. Special means of investigations are provided for all serious crimes and drug trafficking cases and must be ordered by the Chairman of the District Law-Court, with the exception of covert methods, which may be authorised by a prosecutor. The results of interceptions can be used during a criminal trial, but strict conditions must be fulfilled.²⁴⁵

²⁴³ M. Zaharlieva, *Additional Information and Comment on Opinion and Commentary on the Legal Provisions on Trafficking in Human Beings Applicable in Bulgaria*, LARA Project – Criminal Law Reform Against Trafficking in Human Beings, March 2003, p. 4. Available at the website of the Council of Europe www.coe.int (last verified on 19 February 2004).

²⁴⁴ Art. 53: (1) Regardless of the penal liability, the following effects shall be confiscated in favour of the state: a) the effects which belong to the culpable person and were intended or used for the perpetration of an intentional crime; b) the effects which belong to the culpable person and have been the object of an intentional crime – in the cases specifically provided for in the special part of this Code. (2) (New – State Gazette No.28 of 1982) The following effects shall be confiscated in favour of the state: a) the effects, objects or tools of the crime, the possession of which is prohibited, and b) the acquisition made through the criminal act, if it is not subject to returning or restoring. When the acquired thing is missing or has been alienated, its equivalent shall be adjudicated.

²⁴⁵ The use of interceptions in criminal trials may be authorised (a) by written request [...]; (b) by permit to use the SIMs, issued by a District Court's Chairman and/or by its especially empowered Deputy; (c) by written request to produce a material evidence portion (MEP), addressed to the organism, competent for the SIMs application thereat; (d) by Protocol for the production of an MEP – it is issued by the officials and the Director of the relevant MOI's Agency, acted within the SIMs application procedure. Prerequisites of this Protocol are being stipulated as with the Art. 113, para. 2, CCP.

2.3. DATA PROTECTION RULES

The Personal Data Protection Act (came into force on 01.01.2002)²⁴⁶. The Ministry of Interior amended it in 2003 to more closely follow the provisions of the 1981 COE Convention, which was ratified on 01.01.2003. Besides national legislation, Bulgaria has also concluded bilateral and multilateral agreements within the framework of police and judicial assistance including specific provisions for personal data protection. These agreements have been made with most Eastern European countries (with the exception of Albania, Bosnia and Herzegovina, Croatia, Moldova, and Turkey) and 7 EU countries (Austria, Belgium, France, Germany, Ireland, Italy, and Spain). Most notably, there is also an agreement with Europol regarding the transmission of personal data by and to Europol.

The provisions of 2003 Act apply to both law enforcement agencies and to prosecution offices. They are duty-bound to make sure that personal data are not further processed in a way incompatible with the purposes for which the data were collected. Moreover they have to apply both the technological and organisational security measures set out by art. 23, para. 2 and 3, of the 2002 Act and by art. 90 of the Classified Information Protection Act.²⁴⁷ The responsibility for the application of data protection rules lies with the head of the relevant office.

As to transborder data flows, even if law enforcement/prosecution offices may transfer personal data to other States that are not party to the 1981 COE Convention, this transfer is regulated by art. 36, para. 2, of the 2002 Act and by art. 181 of the 2003 Act.²⁴⁸ In the experience of the expert interviewed requests for assistance have been refused because the recipient state could not guarantee data quality and a sufficient protection level.

Art. 6, para. 1, of the 2002 Act established a supervisory authority, the Personal Data Protection Commission, which is independent²⁴⁹ and has, among the others, the power to bring violations of data protection rules to the attention of competent judicial authorities.²⁵⁰

²⁴⁶ The text in English of 2002 Act on the protection of personal data is available on the CD '*Legal Materials*' attached to this report.

²⁴⁷ Art. 90 of the Classified Information Protection Act: (1) The definite Computer Databases and Networks General Security Conditions include any computer, communication, cryptographic, physical and personal security and protection, the security of every electronic support information, whatsoever, as well as wrongful electromagnetic emissions, as specified by Governmental regulation, on proposal from the Minister of Interior. [The Council of Ministers, upon proposal of the Minister for the Interior, adopts Regulations on the general conditions for the protection of Computer Databases and Networks General Security Conditions include any computer, communication, cryptographic, physical and personal security and protection, the security of every electronic support information, whatsoever, as well as wrongful electromagnetic emissions..].

²⁴⁸ Art. 181 of the 2003 Act: (7) Access to Personal data stored in information files may be granted only to the competent authorities responsible for the protection of national security and public order, as well as to the judicial authorities in connection with a specific criminal lawsuit. (8) The personal data specified under para 7 may be also transferred to foreign police authorities under any international agreement, to which the Republic of Bulgaria is a party.

²⁴⁹ See art. 6 of the 2002 Act.

²⁵⁰ See art. 10 of the 2002 Act.

2.4. MULTILATERAL AND BILATERAL AGREEMENTS

a) Legislation

Bulgaria has signed and ratified several international and European instruments for judicial and police cooperation: the European Convention on Extradition (1957 COE – ETS 024), the First additional Protocol to the European Convention on Extradition (1975 COE – ETS 086), the Second additional Protocol to the European Convention on Extradition (1975 COE – ETS 098), the European Convention on Mutual Assistance in Criminal Matters (1959 COE – ETS 030) and its two additional Protocols, the last of which was in 20.04.2004 taking effect from 01.07.2004.²⁵¹

In addition Bulgarian officers and prosecutors may make use of the international cooperation provisions provided for in the following specific instruments against organised crime: the United Nations Convention against Illicit Traffic of Drugs and Psychotropic Substances (1988), the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990, COE – ETS 141), the Criminal Law Convention against Corruption (1999 COE – ETS 173), and, since 2002, the 2000 United Nations Convention against Transnational Organised Crime and its Protocols.

Bulgaria has ratified bilateral and multilateral agreements with other EU and SEE countries, but the preferred legal instrument for cooperation is the European Convention on Mutual Assistance in Criminal Matters.

Besides this international framework there exists national provisions (art. 25, para. 4 Cost. and art. 461 CCP), which regulate judicial assistance and oblige prosecutors to respond to foreign assistance requests.²⁵² Dual criminality is not a prerequisite for providing assistance to the requesting State.

²⁵¹ Besides the above mentioned international acts, Bulgaria has ratified with a law published in SG n.39/1994 and has been enforcing the European Convention on the Transfer of Sentenced Persons drawn up in Strasbourg on 21.03.1983. With laws published in SG n. 11/2004 Bulgaria has also ratified the following international acts: the European Convention on the International recognition of sentences adopted in the Hague on 28.05.1970; the European Convention on the Transfer of Criminal Cases, adopted in Strasbourg on 15.05.1972 and the Additional Protocol to the European Convention on the transfer of sentenced persons, drawn up in Strasbourg on 21.03.1983. According to prosecutorial sources, ratification laws are to take effect for the Republic of Bulgaria on 01.07.2007. In this regard, and in order to adapt national provisions to the international instruments, amendments and complements to the Code of Criminal Procedure of the Republic of Bulgaria are being prepared with the assistance of experts from the Council of Europe.

²⁵² In the Constitution of the Republic of Bulgaria there exists a fundamental principle in the area of international legal assistance, according to which the international multilateral and bilateral acts, ratified by Bulgaria by means of a law become a part of the internal legislation of Bulgaria and have the benefit of priority with respect to domestic law. However, it should be specified that art.25 par.4 of the Constitution of the Republic of Bulgaria contains the following: 'A citizen of the Republic of Bulgaria cannot be driven out of the Republic or surrendered to another state'. In connection with this constitutional exclusion the declaration made by Bulgaria with respect to the European Convention on Extradition of 13.12.1958 (last wording published in SG No. 103/2003) states that 'the Republic of Bulgaria declares that it will consider as a citizen, in conformity with the convention any person that possesses Bulgarian citizenship as of the moment of receiving the request for extradition'. The former wording of the declaration provided that this moment should be considered as 'the moment of making the decision on extradition'. Currently, at the end of 2003 the Ministry of Justice has put forward a bill to the legislation commission of the National Assembly which proposes to amend Art 25 point 4 of the Constitution so that Bulgaria is able to surrender Bulgarian

b) Practices

The following data concerning the practices in the use of the above mentioned bilateral and multilateral instruments come from the International Legal Department. At the International Legal Assistance Department in 2003, 2,355 files in total were created; 2,493 in 2002; 2,133 in 2001; 288 in 2000.

2.5. DIRECT CHANNELS OF POLICE AND JUDICIAL COOPERATION

a) Legislation

Direct judicial cooperation is ensured with all European countries by the deployment of art. 15, para. 2, of the European Convention of Mutual Legal Assistance in Criminal Matters. There are also formal agreements that provide for direct police cooperation with police of all SEE and EU countries with the sole exception of Bosnia and Herzegovina, Finland, Luxembourg and Portugal.

Bulgarian prosecutors, when directly contacted by colleagues of another country asking for assistance, are obliged by law to forward the request for assistance to their competent colleagues if they do not have jurisdiction to implement the request. They are obliged to summon the witnesses and the experts, whose testimony under oath is requested for by colleagues of a foreign country. Also other pieces of information and of evidence can also be collected by a foreign prosecutor investigating in Bulgaria, because Bulgarian prosecutors are obliged by law to forward extracts of bank records and criminal records, when a specific request is made. They are also obliged to provide assistance regarding all the special and ordinary means of investigation available in Croatia (art. 461 CCP), with the sole exception of use of storefronts by investigative units. Finally, they are obliged to execute freezing orders (but not confiscation orders) and search warrants.

With regards to direct cooperation and exchange of information between Bulgarian police officers, there is a legal obligation for them to forward requests for assistance over which they have no jurisdiction to competent colleagues. If Bulgarian police gather information on a transnational organised crime ring that could be useful to develop an investigation in another country, they are not obliged by law to forward that information to the authorities of the other country. However, information is being shared on a regular basis, whenever good working contacts exist with other specialised services for combating organised crime.

Bulgarian police can also share information contained in documents related to vehicle ownership, bank and phone records and documents related to criminal records, even if the original copies of these documents will remain in Bulgaria as a general rule, unless requested through rogatory letter. In addition, telephone data may be shared only on the grounds of an agreement for the Protection of classified data (see above, paragraph 2.3).

citizens to stand trial in an other countries in cases where an international treaty (both bilateral and multilateral, thus including COE and EU instruments), in which Bulgaria is a party, has been concluded.

Finally, when foreign police officers start a shadowing operation (i.e. the covert observation of the movements of a person) in their country, they cannot be authorised to continue it within the borders of Bulgaria, because any surveillance is only possible if carried out by national organisms and a prior request is made to the competent authorities.

b) Practices

Judicial cooperation with Bulgarian prosecutors can only occur through formal channels. If a formal agreement does not exist, Bulgarian prosecutors do not enter into direct contact with prosecutors of other countries. There are also liaison magistrates, which can help in the cooperation process. However practical possibilities of cooperation may be impaired by the lack of training and of technical/computer equipment available to the prosecutors.

It should be mentioned that recently there has been active encouragement of direct contacts between the prosecutors from the International Legal Assistance Department at the Supreme Prosecutor's Office of Cassation of the Republic of Bulgaria and the public prosecutors from analogous units in other countries. This has happened not only in the framework of legal acts (see above paragraph 2.4), but also in operational activities such as the inclusion of the public prosecutors from the ILA Department both in the training and the exchange of practices along the lines of the International cooperation through the programs of TAIEX at the Council of Europe.

Other favourable conditions for direct cooperation are also pursued through the establishment of:

- prosecutors at EUROJUST;
- contact prosecutors for the PACO program;
- contact prosecutors for SEEPAG;
- contact prosecutors for OLAF and GRECO.

Operative police cooperation is mainly achieved through NSCOC, the police agency specialised in combating organised crime. Competent counterparts are normally identified through this channel or through day-to-day working contacts. An Information Exchange and Operative Interaction Coordination Section exists within NSCOC's HQs.

Information for partners from countries, not covered by the bilateral cooperation treaties (which are usually known by Bulgarian police officers), is shared through Interpol's NCB or via the relevant Liaison Offices. The U. K., the Nordic countries, the Netherlands and the US (the DEA, US Secret Service and US Customs field offices) are the countries, with whom the interaction is passes through the Liaison Offices' channels. Other countries where a liaison officer is present are: the Czech Republic, FYRoM, Poland, Romania, Russia, Austria, France, Germany, Greece, Italy and Spain. The liaison officers provide direct links with foreign law enforcement authorities and direct help in the exchange of information. They provide individual core work and can help in identifying the most important rules of the criminal

procedure and police powers of the host country. Their work is assessed as highly useful by the experts.

Other channels available for direct cooperation and deemed to be useful are:

- joint investigation teams (with the Czech Republic, FYRoM, Serbia and Montenegro, Romania, Turkey, France, Germany, The Netherlands, Spain, the United Kingdom, USA-DEA and Secret Service);
- joint surveillance operations (with the Czech Republic, FYRoM, Hungary, Serbia and Montenegro, Romania, Turkey, France, Germany, The Netherlands, Spain, the United Kingdom, USA-DEA and Secret Service).

Police cooperation is also enhanced by the high level of training of Bulgarian officers and the communications and technological means available to NSCOC. However, there is a general lack of financial resources and language problems arise from time to time.

2.6. INTERNATIONAL AND REGIONAL ORGANISATIONS

a) Legislation

Interpol is currently the only international organisation that effectively cooperates with Bulgaria in investigating organised crime cases by exchanging strategic and operational information, financial information on suspected corporate entities, information on investigative procedures and crime prevention methods. Furthermore, it provides: direct contacts with local law enforcement/prosecution offices, training initiatives, advice and support in individual investigations and participates in joint investigation teams in an operational and support capacity.

A cooperation agreement was signed with Europol on 17 June 2003, which was ratified by the Bulgarian Parliament and came into force on 15 August 2003. This agreement permits the exchange of operational information about serious international criminals and criminal organisations between Europol and competent law enforcement agencies in Bulgaria whilst additionally supporting transborder investigations and operational analysis.²⁵³ The Bulgarian Liaison Officer took up his position in September 2003 and a Bulgarian National Contact Point has been functioning regularly since 2004.

Furthermore, Bulgaria is part of the SECI Center and has appointed a liaison officer for this organisation.

b) Practices

Interpol is also the only organisation, whose degree of cooperation could be assessed, because the agreement with the Europol is too recent to provide an accurate assessment. It should be mentioned that in order to enhance practical possibilities of cooperation with international organisations, Bulgaria stationed

²⁵³ See SPOC (Stability Pact Initiative to Fight Organised Crime), *Survey on the National Implementation of the Palermo TOC on South-East Europe*, document available at the Office of the Special Coordinator for Stability Pact for South Eastern Europe, Brussels, August 2004.

contact persons for relations with Eurojust, PACO, SECI-SEEPAG, OLAF and GRECO. The following table illustrates the level of cooperation (where 0=no cooperation, 1=low level of cooperation, 2=medium level of cooperation and 3=high level of cooperation) in the different areas in which it operates. This evaluation is based on the personal judgement of the experts interviewed.

TABLE 5. DEGREE OF COOPERATION BETWEEN BULGARIA AND INTERPOL

Exchange of strategic and operational information	2
Exchange of financial information on suspected corporate entities	1
Provision of direct contacts with local law enforcement authorities	0
Provision of direct contacts with local prosecution offices	-
Exchange of information on investigative procedures and crime prevention methods	0
Training initiatives	-
Advice and support in individual investigations	2
Exchange of liaison officers	0
Participation in joint investigative teams in a support capacity	1
Participation in joint investigative teams in an operational capacity	0

TABLE 6. DEGREE OF COOPERATION BETWEEN BULGARIA AND EUROPOL

Exchange of strategic and operational information	2
Exchange of financial information on suspected corporate entities	1
Provision of direct contacts with local law enforcement authorities	1
Provision of direct contacts with local prosecution offices	-
Exchange of information on investigative procedures and crime prevention methods	0
Training initiatives	1
Advice and support in individual investigations	3
Exchange of liaison officers	3
Participation in joint investigative teams in a support capacity	2
Participation in joint investigative teams in an operative capacity	1

3. GOOD PRACTICES

3.1. STRUCTURES SET UP FOR INTERNATIONAL COOPERATION PURPOSES

The Ministry of justice, with respect to the extraditions of convicted and defendants, and the Supreme Public Prosecutor's Office of Cassation with respect to accused persons and in all cases of the transfer of convicted persons, are the central authorities that implement international legal assistance through requests for legal assistance concerning extraditions and transfers.

The Ministry of Interior and NSCOC are the centralised authorities through which police officers can achieve international police cooperation through the structures of Europol and Interpol. Bulgarian police officers can also resort to the National Investigative Service/examining magistrate, but only with the authorisation of a rogatory commission.

In the Ministry of Justice the Department of International Legal Assistance is uniquely devoted to international judicial cooperation. The department deals with the following cooperation acts: international legal assistance requests for/from abroad (art. 461, par.1 and par 2, point 2 and point 3, CCP); requests for serving judicial papers and exchange of information (art. 461 par.1 and par 2 point 1 and point 4, CCP); execution of extradition requests from foreign countries or addressed to foreign countries (art. 435–441 CCP). The International Legal Assistance department also intercedes between all the territorial divisions of the Public Prosecutor's Office in the country and the competent authorities in other countries, which request or are requested to provide legal assistance.

The Department of International Legal Assistance has translators readily available for an unlimited number of languages and a national form exists, which is used to ask for international judicial assistance. The time necessary to satisfy an assistance request made to a foreign State is up to one week, but this period of time does not relate to the enforcement of the request, for which a longer time is needed. The authorities managing requests for international legal cooperation use the postal system or fax to send requests for assistance and also use to faster means such as email.

NSCOC uses a email and other advanced means of communication and takes less time to answer assistance requests: 22–24 hours for flash requests, 4–5 days for urgent requests, 24–28 days for normal requests.

3.2. DATABASES ON ORGANISED CRIME

In Bulgaria there are two central databases containing information on organised criminal groups.

The first contains information about persons wanted for all kinds of crimes, including participation in organised criminal groups. The database also contains information about persons, who are not charged or sought for, but are subject of a discrete preliminary Police check, such as by covert sources reporting involvement in the establishment, leadership and/or participation in an organized criminal group and in the criminal acts it commits. This database is accessible by foreign

police officers, but they do not have on-line access. Data are shared only on the presentation of a written request for police information.

The second database contains information on persons convicted for all kinds of crime, including participation in organised criminal groups and is accessible by foreign police officers upon the submission of a written request for information to the Director of the NSCOC, which specifies the reasons for the request.

3.3. *MODI OPERANDI*/METHODS IN THE INTERNATIONAL COOPERATION PROCESS

Bulgaria has enacted the following *modi operandi*/methods in order to speed up the international cooperation process:

- providing the requesting authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing the request;
- setting priority to requests which have clearly been marked ‘urgent` by the requesting authority;
- giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authority how the difficulty might be overcome;
- explaining the reasons for the urgency or deadline;
- ensuring that requests are submitted in compliance with the relevant treaty or other international arrangements;
- providing the requested authorities with the name and contact details, including telephone and fax numbers, of the authority and, if possible, the person responsible for issuing the request;
- spontaneous exchange of information;
- joint operational meetings;
- supporting joint investigations with equipment and other types of assistance.

4. EMERGING OBSTACLES

The analysis of legislation, practices and good practices relevant for international cooperation against organized crime has highlighted some shortcomings that are reported here for the sake of clarity, as they represent the background and rationale for the recommendations included in paragraph 5.

4.1. OBSTACLES IN LEGISLATION

1) The lack of provisions on liability of legal persons

One of the most evident gaps in the legal framework against organised crime in Bulgaria is the lack of provisions related to the liability of legal persons involved in criminal activities. This legal shortcoming is even more serious in view of the high level of infiltration of organised criminals into legitimate activities and the exploitation of these covers to carry out criminal acts (e.g. use of casinos, real estate sector and so on). Furthermore, this gap may cause problems in TOC investigations dealing suspect corporations based in Bulgaria.

2) The gaps in the confiscation regime

The Bulgarian confiscation regime does not allow the confiscation of the proceeds of crime in the earlier stages of the proceedings as a court decision is required. Nor it is possible to put the *onus probandi* on the defendant in order to show the legal origin of his/her assets, but it is always up to the prosecutor to prove this. These two aspects weaken confiscation provisions in Bulgaria and might represent an obstacle to carrying out international cooperation regarding confiscation orders.

3) The absence of provisions allowing and regulating special techniques of OC investigations

The CCP of the Republic of Bulgaria does not contain any provisions regarding the use of undercover officers to collect and verify evidence needed for the preliminary investigation process. Undercover operations are allowed in sporadic cases and the use of storefront units is not envisaged.

4) Gaps in direct exchange of data and cooperation provisions

In Bulgaria there are no legal obligations for police officers to forward to competent foreign authorities information on transnational organised crime rings that could be useful to develop an investigation in another country. Furthermore, Bulgarian prosecutors are not obliged to execute confiscation orders. This lack of data sharing and direct cooperation in OC investigations might obstruct the apprehension of OC members.

4.2. OBSTACLES IN PRACTICES

5) The limitations in the technological means available to prosecutors and police officers investigating TOC cases

A computer network (intranet) and official e-mail accounts are available to the HQs of police services (NSCOC, National police, National border police), which are

authorised, according to the Ministry of Interior act, to collaborate at an international level.

These technological means are available only to a certain number of prosecutors investigating TOC cases. For police officers a legal restriction is present (the Protection of Classified Information Act) with regard to intranets.

These limitations of technological means for a certain number of prosecutors and police officers investigating TOC cases, might slow down the international cooperation process.

6) The low level of training of prosecutors in investigating TOC cases

The level of training of prosecutors in investigating TOC cases is rated low. This lack of knowledge impedes the common use of some channels of exchange of information and cooperation.

7) The low level of cooperation with international and regional organisations dealing with international cooperation against OC

Bulgaria has not yet concluded any agreement for cooperation in judicial matters with Eurojust and EJM. The level of cooperation with these institutions is thus very poor. Even the cooperation with Interpol is rated low in the various cooperation activities. Europol's cooperation is very recent and still low, but since 2004 it is successfully developing.

4.3. OBSTACLES IN GOOD PRACTICES

8) The absence of common criminal databases

No common criminal database has yet been established in Bulgaria on OC. In fact, even if there are two working national centralised databases, which contains information about persons wanted/convicted for participating in organised criminal groups, a foreign police officer cannot directly access the information contained in the database.

The absence of such instruments impedes a rapid exchange of information with foreign colleagues on people wanted/convicted for participating in OC groups.

9) The inadequate adoption of good practices of international cooperation

Bulgaria has not yet adopted a large part of the good practices indicated by European and international standards on international cooperation, including very important ones such as:

- acknowledgement of all requests and written enquiries concerning the execution of requests;
- explaining when the assistance requested is likely to be provided;
- compliance with the formalities and procedures expressly indicated by the requesting member state.

This omissions might slow down the cooperation process of Bulgaria with other countries, as these practices have proven to be very important to carry out effective international assistance.

10) The absence of interagency coordination protocols

In Bulgaria there are no interagency coordination protocols among the different agencies dealing with OC cases. In the countries where such structures exist, they have been proven to facilitate a climate of cooperation and the sharing of data among the different national agencies involved in the cooperation process (e.g. police, judiciary, customs, frontier guard, and so on), which is essential for having a OC complete picture for a given country to communicate to the foreign counterparts.

4.4. OTHER OBSTACLES MENTIONED BY THE EXPERTS

11) Obstacles to investigating organised crime

The experts interviewed mentioned the following as the most significant obstacles to investigating organised criminal groups:

- lack of legislation (in particular, the CCP of the Republic of Bulgaria does not still contain any provision, stating about the use of undercover officers to collect and verify evidence materials needed within the preliminary investigation process);
- lack of a multidisciplinary approach; i.e. cooperation between officers with different skills in the development of organised crime investigations;

12) Obstacles to police assistance

The experts interviewed mentioned the following as the most significant obstacles to *police assistance* received by Bulgaria other countries in pre-trial investigations into transnational organised crime:

- partial language problems;
- lack of financial resources;

13) Obstacles to judicial assistance

The experts interviewed mentioned the following as the most significant obstacles to *judicial assistance* received by Albania from other countries in pre-trial investigations into transnational organised crime:

- lack of harmonisation in legislation;
- lack of financial resources;
- lack of training.

5. RECOMMENDATIONS

5.1. RECOMMENDATIONS ON LEGISLATION

Recommendation n. 1

'Establishing liability of legal persons for OC activities'

Background and rationale

One of the most evident gaps in the legal framework against organised crime in Bulgaria is the lack of provisions related to liability of legal persons involved in criminal activities. This legal shortcoming is even more serious in the view of the high level of infiltration of organised criminals in legitimate activities and the exploitation of these covers to carry out criminal deeds (e.g. use of casinos, real estate sector and so on). Furthermore, this gap may cause problems in TOC investigations dealing suspect corporations based in Bulgaria.

Recommendation

Action might be taken to enact provisions dealing with the responsibility of legal persons.

Implementing measures

- Bulgarian legislators should include in the criminal code or in the special legislation against organised crime provisions on liability of legal persons engaging in organised crime activities.
- In alternative, a form of administrative liability for legal persons should be sought in order to make legal persons. The draft special administrative procedure code –currently in preparation– might be used for this purpose.

Recommendation n. 2

'Improving the confiscation regime'

Background and rationale

The Bulgarian confiscation regime does not allow to confiscate the proceeds of crime in the earlier stages of the proceedings as a court decision is required. Nor it is possible to put the *onus probandi* on the defendant in order to show the legal origin of his/her assets, but it is always up to the prosecutor to prove this. These two aspects weaken confiscation provisions in Bulgaria and might represent an obstacle in carrying out international cooperation regarding confiscation orders.

Recommendation

Action might be taken to improve the confiscation regime.

Implementing measures

- Bulgarian legislators should enact provisions making confiscation available in the earlier stages of the proceeding at least in OC cases and easing the burden of proof of the prosecutors.
- In alternative confiscation might be provided for in a separate (civil or administrative proceeding).
- The draft law on the Forfeiture of Criminal Assets to the Exchequer (submitted to the Parliament on 02.03.2004) might be used for this purpose.

Recommendation n. 3

'Expanding the use of special investigative tools to all OC cases'

Background and rationale

The CCP of the republic of Bulgaria does not contain any provision stating about the use of undercover officers to collect and verify evidence materials needed within the preliminary investigation process. Undercover operations are allowed in sporadic cases and the use of storefront units is not envisaged.

Recommendation

Action should be taken to expand special investigative tools to all OC cases.

Implementing measures

Bulgarian legislators should consider to improve the legislative basis related to the undercover officer's use with amendments and additions to the CCP and the MOI's Act.²⁵⁴

²⁵⁴ The expert interviewed also suggests the establishment of the relevant Police (or NSCOC) units, specialised therefor.

Recommendation n. 4**'Expanding the exchange of data on OC and direct cooperation in carrying out operations against OC'***Background and rationale*

In Bulgaria there are no legal obligations for the police officers to forward to competent foreign authorities information on transnational organised crime rings that could be useful to develop an investigation in another country. Furthermore, Bulgarian prosecutors are not obliged to execute confiscation orders. This lack of sharing data and of direct cooperation in OC investigations might relent the apprehension of OC networks.

Recommendation

Action should be taken to expand the direct cooperation in investigative activities and exchange of data by Bulgarian police officers and prosecutors.

Implementing measures

Legislation should be enacted to promote a direct exchange of information on transnational organised crime rings that could be useful to develop an investigation in another country and to allow Bulgarian prosecutors to execute confiscation orders upon formal request of foreign colleagues investigating OC.

4.2. RECOMMENDATIONS ON PRACTICES

Recommendation n. 5**'Improving technological equipment available to police officers/prosecutors'***Background and rationale*

Computer network (intranet) and an official e-mail account are available to HQs on police services (NSCOC, National police, National border police), which are authorised, according to the Ministry of Interior act, to collaborate at an international level.

These technological means are available only to a certain number of prosecutors investigating TOC cases. For police officers a legal restriction is present (the Protection of Classified Information Act) with regard to intranet.

These limitations of technological means for a certain number of prosecutors and police officers investigating TOC cases. might slow down the international cooperation process.

Recommendation

Action might be taken to improve the technological equipment used to send requests of cooperation to other countries and available to police officers/prosecutors.

Implementing measures

All prosecutors and police officers involved in TOC investigations should be provided with computer network (intranet) and an official e-mail account.

Recommendation n. 6

'Improving the level of training of prosecutors in investigating TOC cases'

Background and rationale

The level of training of prosecutors in investigating TOC cases is rated low. This lack of knowledge impedes the common use of some channels of exchange of information and cooperation.

Recommendation

Action might be taken to improve the knowledge of international and regional cooperation possibilities and of new powers and competences of prosecutors.

Implementing measures

- Joint seminars between neighbouring countries should be organised with compulsory participation of reporting officials from the respective countries.
- Training courses and seminars on international and regional cooperation should be organised for the middle management level police officers.
- Education should be given to young police officers in the Bulgarian police schools about international and regional cooperation.

Recommendation n. 7

'Promoting cooperation with international and regional organisations'

Background and rationale

Bulgaria has not yet concluded any agreement for cooperation in judicial matters with Eurojust and EJM. The level of cooperation with these institutions is thus very poor. Even the cooperation with Interpol is rated low in the various cooperation activities. Europol's cooperation is very recent and still low, but since 2004 it is successfully developing.

Recommendation

Action might be taken to promote cooperation with international and regional organisations dealing with police and judicial cooperation.

Implementing measures

- Operative agreements should be reached with Eurojust (besides that of appointing a contact prosecutor) and EJM.
- An operative protocol should be established with Interpol in order to enhance its capabilities of cooperation in with Bulgaria in the various areas where it has been considered as insufficient.
- The level of cooperation with Europol should be further strengthened, for instance by rendering the liaison officer operational.

4.3. RECOMMENDATIONS ON GOOD PRACTICES

Recommendation n. 8**'Establishing common criminal databases'***Background and rationale*

No *common* criminal database has yet been established in Bulgaria on OC. In fact, even if there are two working national centralised databases, which contains information about persons wanted/convicted for participating in organised criminal groups, a foreign police officer cannot directly access the information contained in the database.

The absence of such instruments impedes a rapid exchange of information with foreign colleagues on people wanted/convicted for participating in OC groups.

Recommendation

Action might be taken to establish common criminal databases

Implementing measures

The existing national centralised databases should be made accessible on-line to foreign police officers and prosecutors, provided that guarantees for data protection are respected. This would allow a faster data exchange on TOC.

Recommendation n. 9**'Enhancing *modi operandi*/methods in the international cooperation process'***Background and rationale*

Bulgaria has not yet adopted a large part of the good practices indicated by European and international standards on international cooperation. This might slow down the international cooperation process, as these practices have proven to be essential for these purposes.

Recommendation

Action might be taken to enhance the *modi operandi*/methods in the international cooperation process.

Implementing measures

Bulgarian authorities dealing with mutual legal assistance should adopt the following good practices:

- acknowledgement of all requests and written enquiries concerning the execution of requests;
- explaining when the assistance requested is likely to be provided;
- compliance with the formalities and procedures expressly indicated by the requesting member state.

Recommendation n. 10

'Setting up interagency coordination protocols'

Background and rationale

In Bulgaria there are no interagency coordination protocols among the different agencies dealing with OC cases. In the countries where such structures exist, they have been proven to facilitate a climate of cooperation and the sharing of data among the different national agencies involved in the cooperation process (e.g. police, judiciary, customs, frontier guard, and so on), which is essential for having a OC complete picture for a given country to communicate to the foreign counterparts.

Recommendation

Action might be taken to set up interagency coordination protocols.

Implementing measures

A structure might be establish where all Bulgarian agencies dealing with OC cases can work together ('under the same roof') and share their information on OC. This structure should also be used to communicate and exchange information with similar foreign structures or other foreign colleagues seeking information on OC in Bulgaria.

6.4.

CROATIA²⁵⁵

INTRODUCTION

Croatia has been an independent parliamentary Republic since 1990, following the break up of former Yugoslavia. It joined the UN on 22 May 1992, the OSCE on 24 March 1992 and the Council of Europe on 6 November 1996.

The Croatian Constitution was adopted in 1991 and its criminal law code and criminal procedure code entered into force respectively on 01.01.1998 and on 26.06.1991 (adoption with modifications of the previously existing Law on Criminal Proceedings of 1976). The Criminal Code was amended (National Gazette n. 111/03) in order to improve the fight against organised criminal activities (with special reference to trafficking in persons, money laundering and drug trafficking). These modifications should have already entered into force, but the Croatian Constitutional Court decided that the parliamentary procedure through which these amendments were passed was unconstitutional. Thus the criminal code remains the same as before these innovations, even if a new draft of them is now being debated by Parliament. Finally, a new *Law on Suppression of Organized Crime and Corruption* was enacted in 2002, together with other specific pieces of legislation (e.g. the Law on Penal Responsibility of Legal Persons) have contributed to the advancement of Croatian criminal law provisions towards international and European legal standards.

The criminal procedure code has undergone many reforms the last of which was on 21.05.2002. Croatian criminal procedure is characterised by a mixed system. Accusatorial elements are particularly evident in the preliminary stages of the proceedings and during the trial, but the judge plays a leading role during the all the stages of the proceedings. In particular, it is up to the 'instructing judge' to decide whether to begin the criminal trial.

There are no special investigative units established in Croatia to carry out investigations into organised crime or into criminal activities typically related to organised crime, but there are central offices, which are responsible for conducting investigations into organised crime:

- the Office for Combating Corruption and Organised Crime (USKOK);
- the Organised Crime Department;
- the Drugs Department;
- the Economy Crime and Corruption Department.

²⁵⁵ The Croatian country profile was based, among other materials, on the answers given by the following experts: Drazen Jelenic, Deputy of District Attorney, Zagreb; Zoran Nekić, Head, International Cooperation Police Department, Zagreb. They answered to two questionnaires: one in autumn 2002 and one in summer 2003. The final revision and updating was carried out by Mr. Jelenic in May 2004

1. THE ORGANISED CRIME SITUATION

Since the 1992 – 1995 conflict the country has been going through a slow transition to a market economy and to democracy. ‘*Organised crime may not have reached the level of other countries in the region, but the overall trend seems to be upwards*’.²⁵⁶ The post-war situation has been exploited by criminal groups to carry out a variety of activities, which produced dirty money to be laundered in the licit economy.²⁵⁷

1.1. FEATURES OF THE ORGANISED CRIMINAL GROUPS

Experts estimate that the number of organised crime groups in Croatia ranges between 1 and 10. As far as the average number of participants in each group is concerned estimates differ. Police sources suggest an average number of participants of around 5, while prosecutorial sources estimate that the groups have a higher number of participants, i.e. more than 30. Recent investigations included a group of 28 persons involved in the smuggling of migrants, a group of 9 persons involved in motor vehicle thefts and another of the same size involved in forgery and two groups of 16 persons committing economic offences of various types.²⁵⁸

Although groups made up exclusively of nationals exist and operate in the country, organised groups made up of both nationals and non-nationals are also engaged in criminal activities. In the latter case, the members, who are not of Croat origin, belong to different nationalities. Most seem to come from Bosnia and Herzegovina, Albania, Serbia and Montenegro and Italy, but Slovenian criminals are also said to be present. Recent connections with individuals and criminal organisations from Germany, Austria, Hungary, the Czech Republic, Slovakia, Bulgaria and the newly established states of the former Soviet Union have been also reported.²⁵⁹

With regards the structure of organised criminal groups, the Croatian scene seems to be characterised by groups, which adopt different structures. Most of these criminal groups do not have a vertical hierarchy, but are horizontally organised. There are also groups, which operate in more loosely knit networks of individuals, where criminal activities are carried out on a ‘project basis’. In this case their members are connected only by personal acquaintance and by the common desire to obtain a profit through crime. Although the criminal scene appears to be very variegated and many groups have an organisation, which suggests that no top-level leader is present, it looks as though there are some criminal figures who are dominant, because they gained power and wealth by investing their illicit gains in the process of privatisation. As in other countries in the region, it was the lack of

²⁵⁶ European Commission, External Relations Directorate General, *Croatia: Country Strategy Paper 2002 – 2006 for the CARDS Programme*, p. 27, available at: http://europa.eu.int/comm/external_relations/see/croatia/csp/02_06.pdf (last verified on 8 April 2004).

²⁵⁷ Council of Europe, *Organised Crime Situation Report 2001*, p. 95, available at http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Combating_economic_crime/Organised_crime/Documents/Report2001E.pdf (last verified on 8 April 2004).

²⁵⁸ Ibidem.

²⁵⁹ Ibidem.

transparency in checking the source of the money invested in the privatisation process that allowed some criminals to gain their current prominence.²⁶⁰

Croatian criminals operate on both a national and transnational scale. Following a trend that is common among most of the countries in the region, the members of certain groups cooperate with foreign criminal organisations based outside the country and commit crimes outside state borders.²⁶¹ Not only do contacts exist with the groups present in neighbouring countries, but also with Albanian, Italian, German, Austrian, French, Irish, Dutch, Spanish, Hungarian, Czech, Slovak, Yugoslavian, Bulgarian, Chinese, Russian and Ukrainian organisations. At the same time some of the foreign organisations use these contacts with the Croat groups in order to widen their criminal activities on Croatian soil.²⁶²

1.2. ACTIVITIES OF THE ORGANISED CRIMINAL GROUPS

Because of its geographical position, Croatia is susceptible to **drug trafficking**. Like many other countries in the region, it is on the Balkan Route, which is exploited to transfer heroin from Asian countries to Western European markets. Moreover, because of its extensive coastal borders, which are difficult to patrol effectively, the country is susceptible to the attention of trafficking organisations.²⁶³ The fact that the trafficking of psychotropic substances takes place in Croatia is corroborated by data regarding the number of persons arrested for the offence in 1999: 820.²⁶⁴ The overall number of seizures of narcotics in the first ten months of 2003 was 5,630.²⁶⁵

In 2000 the authorities seized more than 913 kg of cocaine.²⁶⁶ This suggests that apart from heroin passing through the Balkan route, organised criminals also deal in cocaine trafficking. Although no detailed information is available, it is possible that the drug transits through Croatia on its way to western European markets and that only a small amount remains in the country. Seizures of cocaine decreased in

²⁶⁰ European Committee on Crime Problems (CDCP), Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime, *Report on the Organised Crime Situation in Council of Europe Member States, Addendum*, Strasbourg, February 2000, p. 6, available at: http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Combating_economic_crime/Organised_crime/Documents/1Annual_reports.asp#TopOfPage (last verified on 8 April 2004).

²⁶¹ European Commission, External Relations Directorate General, *Croatia: Country Strategy Paper 2002 – 2006 for the CARDS Programme*, cit., p. 27 – 28.

²⁶² European Committee on Crime Problems (CDCP), Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime, *Report on the Organised Crime Situation in Council of Europe Member States, Addendum*, cit., p. 6.

²⁶³ U.S. Department of State, *International Narcotics Control Strategy 2003*, March 2004, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2003/> (last verified on 8 April 2004).

²⁶⁴ European Committee on Crime Problems (CDCP), Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime, *Report on the Organised Crime Situation in Council of Europe Member States, Addendum*, cit., p. 8.

²⁶⁵ U.S. Department of State, *International Narcotics Control Strategy 2003*, cit.

²⁶⁶ Office for Drug Control and Crime Prevention (ODCCP), *Global Illicit Drug Trends 2002*, United Nations, New York, 2002, p. 121.

2001 (1.5 kg of cocaine were seized),²⁶⁷ but in 2003 Croatian authorities seized 336 kg of cocaine at the port of Rovinj destined for European markets.²⁶⁸

Croatia is not a major drug producer: the only drug produced is marijuana, but it is mostly cultivated in small quantities for personal use. Apparently, this kind of production does not involve organised crime operations. No laboratories for the production of amphetamine-based substances have been discovered.²⁶⁹ However, the recent INCSR report suggests that 'authorities believe that given the existence of ecstasy labs in Bosnia and Herzegovina, it is inevitable that small-scale labs will be discovered in Croatia'.²⁷⁰

As far as **trafficking in human beings** is concerned, it mostly regards women and children²⁷¹ trafficked for prostitution and other types of exploitation purposes. Female victims are trafficked through Croatia from the Balkans and former Soviet countries (e.g. from Ukraine, Hungary, Romania, Moldavia, Bulgaria and Slovakia, and former Yugoslav states) to Western Europe (Italy in particular)²⁷² and rarely stay in the country, even if recent reports suggest that Croatia is also becoming an important destination country.²⁷³ Although the presence of some prostitutes of foreign origins has been ascertained, it is not clear whether the foreign girls have been trafficked by organised crime or whether they went to Croatia voluntarily. Some evidence seems to point in the direction of a limited amount of trafficking through the border with Bosnia and Herzegovina. The prostitution market, although it exists, seems to be relatively limited and linked mainly to summer tourism. This leaves open the possibility that a substantial number of the women decided to go to Croatia voluntarily.²⁷⁴ This is partially suggested by the high number of persons who tried to enter Croatia illegally, apparently without the 'aid' of a trafficker, in 1999: 9,977. The number of persons arrested for trying to smuggle people into the country is 303.²⁷⁵

²⁶⁷ Office for Drug Control and Crime Prevention (ODCCP), *Global Illicit Drug Trends 2003*, United Nations, New York, 2003, p. 254.

²⁶⁸ U.S. Department of State, *International Narcotics Control Strategy 2003*, cit.

²⁶⁹ Ibidem.

²⁷⁰ Ibidem.

²⁷¹ Reported cases show that 10% of the victims are minors. See Lehti M, *Trafficking in women and Children in Europe*, Paper n. 18, Helsinki 2003, p. 23–24, available at: <http://www.heuni.fi/uploads/to30c6cjxyah11.pdf> (last verified on 8 April 2004).

²⁷² Commission of the European Communities, *Croatia. Stabilisation and Association Report 2003*, Commission Staff Working Paper, COM(2003) 139 Final, 26 March 2003, p. 33, available at: http://europa.eu.int/comm/external_relations/see/sap/rep2/com03_341_en.pdf (last verified on 8 April 2004). See also Brama, 'Croatia – Trafficking in women and Children for Sexual Exploitation', in *Brama Press Releases*, 15 June 2002.

²⁷³ UNICEF/UNOHCHR/OSCE, *Trafficking in Human Beings in South Eastern Europe*, UNICEF, 2003, p. 117, available at: http://www.osce.org/documents/odihr/2003/12/1645_en.pdf (last verified on 8 April 2004).

²⁷⁴ UNICEF/UNOHCHR/OSCE – ODIHR, *Trafficking in Human Beings in South Eastern Europe*, UNICEF, 2002, p. 117.

²⁷⁵ Unfortunately the data do not specify how many of these persons are Croatian. See European Committee on Crime Problems (CDCP), Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime, *Report on the Organised Crime Situation in Council of Europe Member States, Addendum*, cit., p. 9.

With regards prostitutes of Croatian origins, some of them certainly voluntarily became prostitutes in order to better their personal economic situation. Up until several years ago prostitution primarily took place in bars and nightclubs thus suggesting a degree of organisation and the involvement of organised crime. After various raids by local law enforcement it seems that the prostitution market involving Croatian women is less organised and that it is no longer being managed by a criminal group. In fact the most common way of finding a prostitute now is by calling their mobile phone number, which is advertised in local newspapers.²⁷⁶ This might suggest the low involvement of organised crime in the local sex market and also that those women who continue to work as prostitutes manage their own affairs. However, recent studies have shed light on patterns of exploitation that partially contradict this vision of the autonomy of prostitutes: in fact, at the point where a woman has paid off their debt, managers notify the police, resulting in her arrest and removal.²⁷⁷

Organised crime groups are also involved in the **forgery** of identity documents. It is likely that the groups that commit these crimes are the same ones that operate in the field of trafficking in human beings. In order to traffic people it is essential to provide them with forged documents and there is a tendency for the organised crime groups that traffic human beings to also provide these 'instrumental services'.

Like many post-conflict countries, **arms trafficking** appears to be a problem in Croatia, which is considered to be both a transit and a source country.²⁷⁸ In 1999, 71 persons were reported for arms trafficking. In the same year the authorities detected a large quantity of illicit weapons: 6,978 firearms, 107,589 explosive weapons, 219,995 pieces of ammunition and several kilograms of explosives.²⁷⁹ On 31 October 2002, a ship transporting 208 tons of explosives was stopped at a Croatian port. The ship was loaded in Montenegro and then sailed to Croatia. Investigators have not released official information on the final destination of the cargo yet, but the most accredited hypothesis is that the explosives were destined for a country on which an embargo has been imposed. As of November 2002, only 3 persons have been arrested, but the Croatian Office dealing with organised crime is proceeding with its investigations.²⁸⁰

²⁷⁶ U.S. Department of State, *International Narcotics Control Strategy 2002*, cit.

²⁷⁷ L. Kelly, 'Journeys of Jeopardy: A Commentary on Current Research on Trafficking of Women and Children for Sexual Exploitation Within Europe', paper commissioned for the *EU/IOM European Conference on Preventing and Combating Trafficking in Human Beings: A Global Challenge for the 21st Century*, 18–20 September 2002, available at: <http://www.belgium.iom.int/STOPConference/Conference%20Papers/10%20Liz%20Kelly%20IOM%20STOP%20Conferrece.pdf> (last verified on 8 April 2004), p. 24. See also Stulhofer A., Raboteg-Saric Z., *Sex Trafficking in Croatia: An Assessment Study*, IOM, Geneva 2002.

²⁷⁸ Commission of the European Communities, *Croatia. Stabilisation and Association Report 2003*, cit.

²⁷⁹ These data refer to arms and weapons seized, handed over or found, as specified in: European Committee on Crime Problems (CDCP), Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime, *Report on the Organised Crime Situation in Council of Europe Member States, Addendum*, cit.

²⁸⁰ 'Croatia Says it is Not Arms Trafficking', in *The Washington Post*, 31 October 2002, available at: <http://www.washtimes.com/upi-breaking/200221031-015437-8058rr.htm> (last verified on 8 April 2004).

Data show that it is likely that Croatia is a link in **stolen vehicle trafficking**. In 1999 a large number of persons were arrested for smuggling stolen vehicles: 1373.²⁸¹ Due to its geographical position, Croatia is a country through which vehicles stolen in Western Europe are trafficked on their way to Eastern markets. The high number of stolen vehicles in Croatia in 1999 (i.e. 1848²⁸²) suggests that the country is both a transit country and an origin country. The nature of the crime and the pattern of vehicle trafficking in neighbouring countries, together with the fact that vehicles are often moved through various states suggest that it is possible that vehicle trafficking is undertaken on an organised basis and also in cooperation with foreign criminal groups.

Other crimes linked to organised crime are the **smuggling of petrol and of cigarettes**. With regards this latter crime, data show that it takes place on a massive and organised scale. Cigarettes seem to be produced in Croatia and then smuggled mainly towards Serbia and Montenegro, from where they are further smuggled to the recipient countries in both the SEE region and the EU. Given the importance of the problem, in June 2002 Croatian police launched 'Operation Bulldog 2', which is aimed at curbing cigarette smuggling, especially towards Serbia and Montenegro. After several months of investigation, 25 names of people involved in smuggling towards these countries were delivered to FRY authorities.²⁸³

It seems that organised crime is also involved in economic crimes like fraud. Both **credit card frauds and Internet frauds** are not uncommon. This would suggest that organised criminals are familiar with new technologies and exploit them in order to commit crimes. Other economic crimes such as **bank fraud and usury** are committed by criminal organisations. **Racketeering** is also committed by organised crime.

In Croatia the last few years have seen the first legal proceedings for **corruption** that have persons linked to organised crime as defendants. It has been recognised that during the previous government corruption was rampant and many '*politically – connected tycoons*' siphoned off a massive amount of money from the country.²⁸⁴

There are no studies which analyse the link between corruption and organised crime at the present time: only reports on the perception of corruption are available. TI Corruption perception Index for Croatia has improved in 2002 and 2003 in comparison to 2001.²⁸⁵ However, the perception of corruption among Croatian citizens and businessmen remains high. Recent GRECO reports indicate a high level of corruption in the political arena and in the judiciary, but low levels of

²⁸¹ European Committee on Crime Problems (CDCP), Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime, *Report on the Organised Crime Situation in Council of Europe Member States, Addendum*, cit., p. 8.

²⁸² Ibid., p. 9.

²⁸³ Ibidem.

²⁸⁴ U.S. Embassy in Croatia, *The 2000 Investment Climate Report in Croatia*, 2000, available at: <http://www.southeasteurope.org/documents/zag2345.html> (last verified on 8 April 2004).

²⁸⁵ 'Bulgaria's Corruption Index Improves; Croatia, Romania. Albania Lag', in *The Balkan Times*, 29 August 2002, available at: <http://www.balkantimes.com/html2/english/020829-GEORGI-004.htm> (last verified on 8 April 2004).

administrative corruption. Among the sectors most affected by corruption are those linked to the privatisation process: industries, banking and real estate. However the number of convictions is very low.²⁸⁶

Since the entering into force of criminal provisions against **money laundering** (1998) no convictions have taken place, although 15 investigations have been started. Notwithstanding the absence of convictions, there is a suspicion that organised criminals exploit the Croatian financial system to launder their illicit proceeds, especially those coming from drug trafficking. The economy of Croatia is still mainly cash-based. Moreover, a range of numerous non-bank financial institutions exist, which are not tightly regulated. This makes the country's financial system vulnerable to money laundering, particularly in the placement stage. *Bureaux de changes* seem to be exploited for money laundering. With regards the layering and integration stages, the real estate sector is the most vulnerable.²⁸⁷

To **infiltrate** the economy criminals also exploit the tourism sector, casinos and nightlife services. There is a suspicion that the financial sector is also used to launder money and that professionals such as lawyers and accountants take part in the operations.

2. LEGISLATION AND PRACTICES

2.1. CRIMINAL LAW

Croatia has signed and ratified most of the relevant international and European specific instruments against organised crime: the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (by succession on 26.07.1993), the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ratification on 01.02.1998), the 1999 Council of Europe Criminal Law Convention on Corruption (ratified on 01.07.2002), the United Nations Convention against Transnational Organised Crime and its Protocols (ratified on 24.01.2003).

Accordingly, the Croatian criminal code (National Gazette N 110/97, which entered into force on 01.01.1998) was amended (National Gazette N. 111/03) to harmonize criminal definitions with the European and international standards. However, as mentioned above (see Introduction), these amendments have not entered into force, because of the decision of the Constitutional Court, which declared that the procedure followed to enact these modifications was unconstitutional.

²⁸⁶ GRECO, *Evaluation Report on Croatia. First Evaluation Round*, Strasbourg, 17 May 2002, available at: [http://www.greco.coe.int/evaluations/cycle1/GrecoEval1Rep\(2002\)4E-Croatia.pdf](http://www.greco.coe.int/evaluations/cycle1/GrecoEval1Rep(2002)4E-Croatia.pdf) (last verified on 8 April 2004).

²⁸⁷ Financial Action Task Force, *Croatia*, available at: http://www1.oecd.org/fatf/Ctry-orgpages/ecry-hr_en.htm (last verified on 8 April 2004). According to US sources, Croatia is not a regional financial centre, which can be exploited for money laundering, but dirty money is reinvested in real estate and luxury goods. See U.S. Department of State, *International Narcotics Control Strategy 2003*, cit.

At the moment the offences of participation in a criminal association (art. 333, sections 3 and 4, CC), money laundering (art. 279 CC),²⁸⁸ trafficking in human beings (art. 175, 177, 178 CC)²⁸⁹ and drug trafficking (art. 173 CC)²⁹⁰ are

²⁸⁸ Art. 279 (Palliation of illegally obtained money): (1) Whoever, in banking, monetary or other economic commerce lodges, accepts, exchanges or in any other way conceals the real source of money/objects or rights procured by money for which he or she knows is provided by criminal offence, shall be punished by imprisonment for six months to five years. (2) By the punishment prescript in paragraph 1 of this Article, shall be punished whoever that money, objects or rights from paragraph 1 of this Article procures for himself or any other person, possesses and traffics, if at the time of procuring he or she was knew of its origins. (3) Whoever commits the criminal offence referred to in paragraphs 1 and 2 of this Article as a member of a group or criminal organisation shall be punished by imprisonment for one to ten years. (4) Whoever abets by negligence in the cases provided for in paragraphs 1 and 2 of this Article shall be punished by imprisonment for three months to three years. (5) If the money, objects or rights referred to in paragraphs 1, 2 and 4 of this Article are procured by a criminal offence committed in foreign country, those offences shall be judged according to the provisions of Croatian criminal legislation by applying Article 16 paragraphs 2 and 3 of this Code. (6) The money and objects referred to in paragraphs 1, 2 and 4 of this Article shall be confiscated and the rights shall be declared void. (7) The perpetrator of criminal offences referred to in paragraphs 1, 2, 3 and 4 of this Article who voluntarily contributes to the detection of a criminal offence, may be exempted from punishment, by the court's decision.

²⁸⁹ Art. 175 (Trafficking in human beings): (1) Whoever, in violation of the rules of international law, by force, or by threat of force or by fraud, by abduction, by abuse of a position or power, entices, buys, sells, hands over, transports, transfers, incites or mediates in the purchase, sale or handing over, hides or receives a person for the purpose of slavery or similar status, forced labour or service, sexual exploitation or transplantation of human body parts, or whoever keeps a person in slavery or in a similar status, shall be punished by imprisonment for one to ten years. (2) If the criminal offence referred to in paragraph 1 of this Article is committed against a child or minor, the perpetrator shall be punished by imprisonment for three to fifteen years. (3) If the criminal offence referred to in paragraphs 1 and 2 of this article is committed in the context of a group or criminal organisation, or a larger number of persons or if it caused the death of one or more persons, the perpetrator shall be punished by imprisonment for not less than five years or by life imprisonment. (4) Whoever, procures or enables resources, fends off obstacles, makes plans or arrangements with any other person, or takes any other action aimed to create the conditions for the direct committing of a criminal offence referred to in paragraph 1 of this Article, shall be punished by imprisonment for one to five years. (5) Whoever, abstracts or destroys an identification card, passport or other identification document to commit a criminal offence referred to in paragraphs 1 and 2 of this Article shall be punished by imprisonment for three months to five years. (6) Whoever, avails or provides other person to avail sexual services, or for others prohibited purposes exploits a person he or she who knows is victim of trafficking in human beings shall be punished by imprisonment for one to five years. (7) It is of no relevance for the existence of criminal offence referred to in paragraphs 1 and 2 of this Article the circumstance that a person has agreed upon forced labour or service, sexual exploitation, slavery or the similar status or unallowable transplantation parts of her/his body.

²⁹⁰ Art. 173 (Abuse of drugs): (1) Whoever, illegally, possesses substances or preparations which are statutory drugs shall be punished by fine or by imprisonment up to one to year. (2) Whoever, illegally produces, processes, sells or offers for the sale, or with the aim of sale buys, possesses or carries, or intercedes in the sale or purchase, or in any other way illegally traffics substances or preparations which are statutory drugs, shall be punished by imprisonment for one to twelve years. (3) If the criminal offence referred to in paragraph 1 or 2 of this Article is committed by more persons which are incorporated for committing those criminal offences, or if the perpetrator has organised network of persons for jobbery or for intercession, the perpetrator shall be punished by imprisonment for not less then three years, or by long term imprisonment. (4) Whoever, illegally, makes, procures, possesses or gives for use equipment, material or substances for which knows that are dedicated to the production of drugs, shall be punished by imprisonment for three months to five years. (5) Whoever, entices other person to consume drugs, or gives another person drugs for consumption either for him or for other person, or provides premises for the consumption of drugs, or in any other way enables other person to consume drugs, shall be punished by imprisonment for three months to five years. (6) If the criminal offence referred to in paragraph 5 of this Article is committed against a child, or a minor, or a mentally ill person, or a temporarily deranged person, or a mentally disabled person or more persons, or if it has caused especially serious consequences, the perpetrator shall be punished by imprisonment for one to ten years. (7) Drugs and devices for their

criminalized, but some gaps still persist in the translation of the international and European standards into national legislation.²⁹¹

On the other hand, some steps forward have been made with reference to liability of legal persons. In fact, the only legislation applicable to criminal activities carried out through legal persons used to be the Law on Economic Offences of 1977 (updated in 1991), which defined such economic offences as ‘violations of the laws and regulations of economic operations and financial transactions’. The scope of these provisions was very limited as they only took into account economic operations and not criminal activities as such. As the standard provided for in international and European instruments was not met, the Government of the Republic of Croatia took steps to prepare a new Law on the Criminal Liability of Legal Entities, which has been in force since 25.03.2002.

Other improvements regard the anti-money laundering regime with the new law on the prevention of money laundering of July 2003, which adapts the legal instruments for the fight against money laundering to the EU directives.

2.2. CRIMINAL PROCEDURE

Despite the existence of both a confiscation regime and special means of investigations, there are still some shortcomings in Croatian procedural provisions against organised crime.

The first problem regards the partial absence of an adequate system of protection for witnesses. The Code of Criminal Procedure (art. 238 and 239, as amended on 21.05.2002, Official Gazette 58/2002)²⁹² does contain some general rules regarding protection, such as the deployment of communications technology such as video links, to protect the safety of witnesses. However, detailed provisions entered into force on 01.01.2004 with the enactment of the Law on Witness Protection, which greatly improves witness protection in Croatia.

preparation shall be confiscated. (8) The perpetrator of the criminal offences referred to in paragraphs 1, 2, 3, 4 and 5 of this Article who voluntarily contributes to the detection of the criminal offence may be exempted from punishment by a court order.

²⁹¹ With regard to the definition of trafficking in human beings and its discrepancy from the international standards, see G. Staberock, *Opinion and Commentary on Criminal Law Reform in South Eastern Europe applicable in Croatia*, LARA Project – Criminal Law Reform Against Trafficking in Human Beings, April 2003, available at the website of the Council of Europe (last verified on 18 February 2004). With regard to the definition of money laundering and its discrepancy from the international standards, see Council of Europe, Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL), *First Evaluation Report on Croatia. Summary*, Strasbourg, 9 June 2000, available at <http://www.coe.int> (last verified on 20 January 2004).

²⁹² Art. 238 paragraph 4, CCP: The witness may be permitted not to answer the questions from paragraph 3 of this Article (first name and surname, father’s first name, unique citizen register number for a national of Republic of Croatia, occupation, place of residence, place of birth, age, and his relation to the defendant and the injured person) if his answer could endanger his life, health, physical integrity, freedom or substantial property belonging to him or another person. Article 239, paragraph 5, CCP: Taking into consideration his age, physical and mental health or other justifiable interests, the witness may be examined by means of technical devices for the transmission of image and sound, so that the parties may examine him without being present in the room where the witness is located. If necessary, for such a type of examination the expert referred to in Article 198 paragraph 8 of this Act may appointed.

The Croatian confiscation regime has an 'all crime approach', which means that it is possible to confiscate the proceeds from all types of criminal offences. According to art. 82 CC,²⁹³ both property and value confiscation is admitted, so that in cases where the confiscation of property acquired by the perpetration of the offence is not feasible, the perpetrator shall be obliged to pay an amount of money which corresponds to the acquired material gain. However, there are two weaknesses in the confiscation system provided for in the Croatian criminal code. The first is the necessity of having a court decision establishing that a criminal offence has been committed before confiscation (art. 82, paragraph 1). It is thus impossible to confiscate the proceeds of crime in the earlier stages of the proceedings. Secondly, if there is a probable cause to believe that the property/money derives from a criminal offence and the owner or possessor is not able to give evidence that the property/gain was acquired legally, the national legislation does not allow the property/money to be confiscated.

Finally, Croatian Code of Criminal Procedure adopts most of the modern means of investigation: interception of telephone conversations, fax and Internet transmission, audio and video recording of events taking place on private premises, undercover operations, use of storefronts by investigative units, covert methods such as controlled delivery.²⁹⁴ These measures must be ordered by the investigating judge, upon the request of the State Attorney, when the investigations are particularly difficult to carry out. The special means of investigation may be deployed only for serious crimes typically related to organised crime activities and drug trafficking related cases.²⁹⁵ They may be used as evidence during a criminal trial provided that all the rules of their acquisition have been respected.²⁹⁶

²⁹³ Art. 82 (Confiscation of Pecuniary Gain Acquired by a Criminal Offence): (1) No one shall retain any pecuniary gain acquired as a result of criminal offence. (2) The confiscation of a pecuniary gain shall be ordered by a court decision establishing that a criminal offence has been committed. If it is impossible to seize in full or in part the pecuniary gain consisting of money, securities or objects, the court shall oblige the perpetrator of the criminal offence to pay the corresponding pecuniary counter-value. (3) The pecuniary gain shall also be forfeited if it is owned by a third party on any legal grounds if such party, according to the circumstances in which he has acquired the gain, knew or should have known or ought to have known that this gain was obtained as a result of a criminal offence [...].

²⁹⁴ Art. 180: (1) If inquiries into offences cannot be carried out in any other way or would be accompanied by great difficulties, the investigating judge may, upon the request of the State Attorney, order against the person against whom there are grounds for suspicion that he has committed or has taken part in committing an offence referred to in Article 181 of this Act measures which temporarily restrict certain constitutional rights of citizens as follows: 1) surveillance and interception of telephone conversations or means of remote technical communication; 2) surveillance and technical recording in premises; 3) covert following and technical recording of individuals and objects; 4) use of undercover investigators; 5) simulated purchase of certain objects and simulated bribery; 6) supervised transport and delivery of objects from offences. (2) Measures referred to in subparagraph 1 paragraph 2 of this Article may also be ordered against persons against whom there are grounds for suspicion that he delivers to the perpetrator or receives from the perpetrator of the offences referred to in Article 181 of this Act information and messages in relation to offences or that the perpetrator uses their telephone, telex, fax or similar device. (3) The execution of measures referred to in paragraph 1 subparagraphs 4 and 5 of this Article should not constitute a instigation to commit an offence.

²⁹⁵ Art. 181: Measures referred to in Article 180 of this Act may be ordered if the following offences are involved: 1) offences against the Republic of Croatia and against values protected by international law punishable by imprisonment for a term of five years or more; 2) murders, robbery with severe consequences, money laundering, counterfeiting of money, illicit possession of weapons and explosive substances, acceptance and offers of a bribe, blackmail, kidnapping, extortion, associating for the purpose

2.3. DATA PROTECTION RULES

Data protection rules have been enacted very recently in Croatia with the 2003 Act on the protection of personal data (National Gazette N. 103/03, in force since 26.06.2003).²⁹⁷ This law is based on the 1981 COE Convention and its 2001 protocol, which have not yet been ratified though. Besides national legislation, Croatia has also concluded bilateral and multilateral agreements within the framework of police and judicial assistance including specific provisions for personal data protection. These agreements refer to all SEE countries, with the exception of Slovakia (for judicial cooperation) and Moldova (for police cooperation), and with other EU countries (Greece and United Kingdom for judicial cooperation, and, in addition to these countries, Austria, Belgium, and Italy for police cooperation). Other agreements have been signed with Latvia and Ukraine for judicial cooperation and, for police cooperation, with Baden Württemberg, Bavaria, Chile, India, China, Lettonia, Sri Lanka and Ukraine.

However no agreement currently exists with Europol regarding the transmission of personal data by and to Europol. This gap is thus impairing cooperation with

of committing a criminal offence, bodily or sexual abuse of children and minors, abuse of narcotic drugs, unlawful transfer of persons across the state border, international prostitution, pandering, avoiding customs inspection, obstruction of evidence, duress against officials engaged in the administration of justice and abuse performing governmental duties; 3) offences punishable by imprisonment for a term of five years or more when reasonable suspicion exists that such offences are prepared or committed by a group of persons or criminal organization.

²⁹⁶ Art. 182: (1) Measures referred to in Article 180 of this Act shall be ordered by a written order containing a statement of reasons. The order shall be executed by police authorities. The order shall state the data on the person against whom the measures are to be applied, the facts justifying the necessity for applying the measures and the term for their duration. Postal organizations shall render technical help to police authorities, the investigating judge and the State Attorney in executing the order. (2) The measures undertaken may last up to four months. Upon the motion of the State Attorney the investigating judge may, if important reasons exist, prolong the duration of such measures for a term of another three months. The panel of the county court shall decide on a disagreement between the State Attorney and the investigating judge (Article 20 paragraph 2). As soon as the conditions for surveillance cease to exist the investigating judge is bound to order the vacation of the measures undertaken. If the State Attorney desists from prosecution or if the data and information obtained by the application of the measures are not relevant for proceedings, they shall be destroyed under the supervision of the investigating judge, who will draw up a separate record thereof and enclose it with the file. (3) The order referred to in paragraph 1 of this Article shall be kept in a separate cover. After the termination of the surveillance and even before that, the order on surveillance may be delivered to the person the surveillance was ordered against if he so requests, provided that this is to the benefit of the proceedings. (4) If during the course of the surveillance and covert recording data and information relating to another offence are recorded, that part of the recording shall be copied and delivered to the State Attorney if the offences stated in Article 181 of this Act are involved. (5) Regarding the conversations of the defendant with his defence counsel the provisions from Article 69 of this Act shall be applied in the appropriate manner. (6) If measures referred to in Article 180 of this Act are undertaken without the order of the investigating judge or if they are conducted contrary to the provisions referred to in Articles 180 and 182 paragraph 2 of this Act, the court's decision in criminal proceedings shall not be founded on the obtained data and information or on the evidence deriving from such data and information. (7) The State Attorney Service and the investigating judge shall prevent in the appropriate manner (a transcript of the record or official notes without personal data therein, excluding the official note from the file etc.) unauthorized persons as well as the suspect and his defence counsel from establishing the identity of the police officials who carried out measures referred to in Article 180 paragraph 1 subparagraphs 4 and 5 of this Act.

²⁹⁷ The text in English of the 2003 Act on the protection of personal data is available on the CD '*Legal Materials*' attached to this report.

Europol, as the Europol convention requires an agreement, based on the evaluation of the system of protection of data, in order to exchange data with third countries.

The provisions of the 2003 Act apply to law both enforcement agencies and to prosecution offices, but there are exemptions on the grounds of national security and investigative secrecy. Moreover, according to art. 16, personal data regarding corruption, organised crime and terrorism, do not have to be recorded in the Central Registrar. They are duty-bound to make sure that personal data are not further processed in a way incompatible with the purposes for which the data were collected. Moreover they have to apply the following organisational security measures, which are the responsibility of the relevant office and the individual judge/prosecutors:

- restriction of the number of staff that are allowed to have sight of the data;
- make tracing persons that accessed the data possible;
- mark some of the data as a 'top secret', which means that only the head of the office or the person he/she appoints has access to this particular data;
- oblige the staff to keep information taken from data secret;
- prescribe the violation of this obligation as a offence against working duties;
- prescribe the unlawful use of personal data as a criminal offence.

However, no technical protection measures have yet been prescribed.

As to transborder data flows, even if law enforcement/prosecution offices transfer personal data to other countries that are not party to the 1981 COE Convention, this transfer is regulated by art. 13 of the 2003 Act. Basically, data transfer is allowed only if the state or the international organisation to which personal data are transferred has appropriately regulated personal data protection requirements and an adequate level of protection is ensured. A prior control is required and, if there are grounds for doubt, an expert statement from the agency for the protection of personal data (see below) is also required.

Art. 27 of the 2003 Act established a supervisory authority Agency for the protection of personal data, which has the following main tasks: supervise the implementation of personal data protection, pass on reported abuses in personal data collection, compose a list of states and international organisations that have adequately regulated personal data protection in place, determine whether breaches of the rights covered by this Act have taken place, keep a central register, and all the other duties described by art. 32 and 33. This Agency is autonomous (also budget wise) and responds to the Croatian Parliament (art. 28–31).

2.4. MULTILATERAL AND BILATERAL AGREEMENTS

a) Legislation

Croatia has signed and ratified several international and European instruments for judicial and police cooperation: the European Convention on Extradition (1957 COE – ETS 024), the First additional Protocol to the European Convention on Extradition (1975 COE – ETS 086), the Second additional Protocol to the European Convention

on Extradition (1975 COE – ETS 098), the European Convention on Mutual Assistance in Criminal Matters (1959 COE – ETS 030) and its additional Protocol (1978 COE – ETS 099).

In addition Croatian officers and prosecutors may make use of the international cooperation provisions provided for in the following specific instruments against organised crime: the United Nations Convention against Illicit Traffic of Drugs and Psychotropic Substances (1988), the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990, COE – ETS 141), the Criminal Law Convention against Corruption (1999 COE – ETS 173), and, since 2003, the 2000 United Nations Convention against Transnational Organised Crime and its Protocols.

At a bilateral level, Croatia has concluded agreements, which regulate international judicial assistance, with almost all the SEE countries, with the exception of Moldova, and with many EU countries, with the exception of Denmark, Finland, Ireland, Luxembourg, The Netherlands, Portugal, and Sweden.

b) Practices

In the experience of the experts, all the instruments for judicial cooperation are used often. At a lower level also the provisions for cooperation with other international instruments in the fight against organised crime are used: the United Nations Convention against illicit traffic of Drugs and Psychotropic Substances (1988), the Criminal Law Convention against Corruption (1998 COE –ETS 173), and the European Convention on Laundering (1990 COE – ETS 141).

At a bilateral level, the agreements for international judicial assistance are mostly used with neighbouring countries: Bosnia and Herzegovina, Serbia and Montenegro, Hungary, and Slovenia ('often used'), followed by Czech Republic and FYRoM ('averagely used'), and by Albania, Bulgaria, Romania and Slovakia ('rarely used'). The prosecutor interviewed has never used the agreements with Poland and Turkey. As regards EU countries, the most frequent contacts for assistance are those with Austria, Germany and Italy, followed by the United Kingdom. Agreements with France and Spain have rarely been used and agreements with Belgium and Greece have never been used in the experience of the public prosecutor interviewed.

Besides this international framework there exist national provisions, which regulate judicial assistance and oblige prosecutors/investigating judges to respond to foreign assistance requests, provided that dual criminality requirements are fulfilled.²⁹⁸ In particular, art. 9 Const. and art. 511–523 CCP provide for extradition for trial and for sentencing; art. 507 CCP for the execution of foreign sentences; art. 527 CCP for the transfer of prisoners, art. 504–506 CCP for rogatory letters.

²⁹⁸ All the relevant provisions regulating international assistance from Croatia are available on the CD '*Legal Materials*' attached to this report.

2.5. ASSISTANCE THROUGH DIRECT CONTACT

a) Legislation

No agreements or legislation exists, which provides for direct judicial cooperation of Croatian prosecutors/investigating judges with those of other countries. There are instead formal agreements that provide for direct police cooperation with police of other countries.

Croatian prosecutors/investigating judges, when directly contacted by colleagues of another country asking for assistance are obliged by law to forward the request for assistance to their competent colleagues, if they do have not jurisdiction to implement the request. They are obliged to summon the witnesses and the experts, whose testimony under oath is requested for by colleagues in a foreign country. Other pieces of information and evidence can also be collected by a foreign prosecutor investigating in Croatia, because Croatian prosecutors are obliged by law to forward extracts of bank records and criminal records, when a specific request is made. They are also obliged to provide assistance regarding all the special and ordinary means of investigation available in Croatia, with the sole exception of the use of storefronts by investigative units. However, they are not obliged to execute freezing or confiscation orders or search warrants.

The situation is very similar with regards to direct cooperation and exchange of information between Croatian police officers. They are obliged by law to forward to competent colleagues any requests for assistance, which they have no jurisdiction upon. Moreover, when Croatian police gather information on a transnational organised crime ring, which could be useful to develop an investigation in another country, they are obliged by law to forward that information to the authorities of the other country. Croatian police can also send copies of documents related to auto vehicle ownership directly, but not copies of bank and phone records and documents related to criminal records. Finally, when foreign police officers start a shadowing operation (i.e. the covert observation of the movements of a person) in their country, they may be authorised to continue it within the borders of Croatia.

b) Practices

Judicial cooperation with Croatian prosecutors/investigating judges can occur only through formal channels. If a formal agreement does not exist, Croatian prosecutors/investigating judges do not enter into direct contact with prosecutors/investigating judges of other countries. Additionally, Croatia does not post liaison magistrates to foreign countries. The letters rogatory are thus entitled in an indefinite way, i.e. to a general 'competent state body' of the requested state. All these factors render judicial cooperation rather slow and rigid.

Operational police cooperation is mainly achieved through Interpol, which is the normal instrument for identifying the competent counterparts in foreign countries. Only a small part of operational police cooperation goes through specialised departments within the Criminal Police Directorate, which cooperate directly with police of other countries. Croatian police officers are informed of the possibility of being able to cooperate with police of other countries through bilateral agreements. However, they rarely enter into direct contact with police officers of other countries, whether a formal agreement exists or not.

Another channel for direct police cooperation is the liaison officer in the SECI Center, which is considered to be of medium usefulness; otherwise, Croatia does not send liaison officers into foreign countries. There is however the possibility of carrying out joint investigations with foreign law enforcement authorities, especially with the Czech Republic, Slovenia, Austria, Germany, Italy and The Netherlands. With all SECI Center Member States is also possible to carry out international joint customs surveillance operations.

Direct cooperation between police agencies at an operational level is considered the most purpose-serving form of cooperation. Thus, joint investigative teams are considered to have a high level of usefulness especially with regards to concrete investigations at an international level.

Finally, the following are some of the factors impairing the practical possibilities for direct cooperation between Croatian prosecutors/ police officers and their foreign counterparts:

- lack of computer equipment, such as computer networks (intranet) and official e-mail accounts;
- absence of readily available translators, who can translate the official documents coming from a foreign country in answer to an assistance request;
- low level of training in investigating transnational organised crime among Croatian prosecutors, even if Croatian police officers have a medium level of training.

2.6. ASSISTANCE THROUGH INTERNATIONAL AND REGIONAL ORGANISATIONS

a) Legislation

Interpol is currently the only international organisation that effectively cooperates with Croatia in investigating organised crime cases. The Croatian Interpol Bureau, based in Zagreb, exchanges strategic and operational information, financial information on suspected corporate entities, information on investigative procedures and crime prevention methods. Furthermore, it provides direct contacts with local law enforcement/prosecution offices, training initiatives, advice and support for individual investigations, participation in joint investigation teams in an operational and support capacity.

No cooperation has been achieved with any of the other regional organisations formed for cooperation purposes (Europol²⁹⁹, Eurojust, and EJM), apart from a SECI Center liaison officer and support in international joint customs surveillance operations.

b) Practices

As Interpol is the only international organisation operating in Croatia, it is also the only organisation, whose degree of cooperation could be assessed. In the

²⁹⁹ A draft bilateral cooperation agreement with Europol should be completed by the end of 2004.

experience of our experts, the frequency of use of Interpol records and its communication system is high. Additionally the following table illustrates the level of cooperation (where 0=no cooperation, 1=low level of cooperation, 2=medium level of cooperation and 3=high level of cooperation) in the different areas in which it operates. This evaluation is based on the personal judgement of the experts interviewed.

TABLE 7. DEGREE OF COOPERATION BETWEEN CROATIA AND INTERPOL

Exchange of strategic and operational information	3
Exchange of financial information on suspected corporate entities	3
Provision of direct contacts with local law enforcement authorities	3
Provision of direct contacts with local prosecution offices	2
Exchange of information on investigative procedures and crime prevention methods	3
Training initiatives	2
Advice and support in individual investigations	3
Exchange of liaison officers	2
Participation in joint investigative teams in a support capacity	2
Participation in joint investigative teams in an operative capacity	2

3. GOOD PRACTICES

3.1. STRUCTURES SET UP FOR INTERNATIONAL COOPERATION PURPOSES

The Ministry of Justice and the Ministry of Interior are the centralised authorities through which public prosecutors/investigating judges and police officers have to channel their requests for international assistance. In the Ministry of Justice there also exists a Department uniquely devoted to international judicial cooperation.

The above-mentioned central authorities have translators readily available for the following languages: French, English, and German. Requests for assistance are sent only by mail and fax (not by email) and a national form exists, which is used to ask for international assistance.

The time necessary to get an answer to an assistance request made to a foreign state is very long: more than two months are required on average.

3.2. DATABASES ON ORGANISED CRIME

No common criminal databases have been established to share OC information collected in Croatia with foreign counterpart colleagues.

Furthermore, even though there is a national centralised database, which contains information about persons wanted for participating in OC groups, a foreign police officer cannot access the information contained in the database.

Information related to persons convicted for participating in organised criminal groups, has not yet been collected in a national centralised database.

3.3. *MODI OPERANDI*/METHODS IN THE INTERNATIONAL COOPERATION PROCESS

Croatia has enacted the following *modi operandi*/methods in order to speed up the international cooperation process:

- acknowledgement of all requests and written enquiries concerning the execution of requests;
- setting priority to requests which have clearly been marked 'urgent' by the requesting authority;
- stating the reasons for the urgency or deadline;
- ensuring that requests are submitted in compliance with the relevant treaty or other international arrangements;
- compliance with the formalities and procedures expressly indicated by the requesting member state;
- spontaneous exchange of information;
- joint operational meetings.

Besides these commonly accepted good practices, Croatia has also enacted the following:

- giving priority in everyday work to the requests for legal assistance from foreign countries;
- internal regulations and guidelines have been issued for prosecutors for dealing with requests for legal assistance.

4. EMERGING OBSTACLES

The analysis of legislation, practices and good practices relevant for international cooperation against organized crime has highlighted some shortcomings that are reported here for the sake of clarity, as they represent the background and rationale for the recommendations in paragraph 5.

4.1. OBSTACLES IN LEGISLATION

1) The lack of a harmonised definition of the conduct of trafficking in human beings

At the moment the definition of trafficking in human beings, which should have entered into force in January 2004 and was consistent with the UN Protocol, has not been applied because the Constitutional Court of Croatia did not the amendments of the Criminal Code containing it. Thus, there is still a variety of norms that provide some legal basis to penalise this conduct, but are only effectively applied by judges and prosecutors who have experience of the problem. This lack of harmonisation with the international standards on trafficking in human beings may

impair the fight against this phenomenon and the relative cooperation with foreign authorities.

2) The gaps in the confiscation regime

The Croatian confiscation regime is both property and value based and characterised by an all-crime approach. However, it is not possible to put the *onus probandi* on the defendant in order to show the legal origin of his/her assets. It is always up to the prosecutor to prove this with a high evidentiary burden. Furthermore, conviction is always a prerequisite before confiscation can be applied, thus making confiscation impossible in the early stages of the proceedings.

3) The lack of ratification of the 1981 COE Convention and of data protection agreements with Europol

Croatia has not yet ratified the 1981 COE Convention (signed in 1981) and relative data protection provisions. Furthermore, it has not concluded agreements with Europol within the framework of police and judicial cooperation containing provisions to protect personal data. The absence of such legal instruments obstructs police and judicial cooperation with the countries that have enacted a data protection regime and are party to the 1981 COE Convention.

4) The gaps in direct cooperation legal possibilities

Croatian police officers cannot legally send bank, phone, and criminal records directly to a foreign counterpart.

In Croatia there are no direct legal obligations for prosecutors/investigative judges to execute search warrants or freezing and confiscation orders for foreign colleagues.

Finally, there are no liaison magistrates stationed by Croatia in foreign countries, so that Croatian letters of rogatory are vaguely addressed to a 'competent state body'.

All these gaps slow down the cooperation process with foreign authorities investigating criminal networks in Croatia and might represent an obstacle for effectively fighting TOC activities in the Region.

4.2. OBSTACLES IN PRACTICES

5) The scarcity of fast communication systems

Official e-mail accounts are not available to all Croatian prosecutors and police officers investigating TOC. Given the need of fast communication with foreign counterpart colleagues in TOC cases, this deficiency may be an obstacle to the successful completion of transborder operations.

6) The lack of readily available translators

Croatian prosecutors do not have readily available translators for the documents coming from a foreign country in answer to a cooperation request. The difficulties in finding such professional figures may slow the process of getting and exchanging information with other countries.

7) The low level of training of prosecutors in investigating TOC cases

The level of training of prosecutors investigating TOC cases is low. This lack of preparation impedes potential cooperation channels, because they might be unknown to the prosecutors working to TOC cases

8) The absence of cooperation protocols with Europol, Eurojust and EJN

There is no cooperation between Europol, Eurojust and EJN, and Croatia. These regional organisations could enhance data exchange and cooperation among the European countries, but the lack of cooperation agreements or protocols impedes this form of cooperation.

4.3. OBSTACLES IN GOOD PRACTICES

9) The lengthiness of assistance procedures through central authorities

It takes more than two months to get an answer to an assistance request made through central authorities. This might be due to the fact that direct channels of cooperation are not fully exploited in Croatia. The lengthiness of the procedure is a deficiency that greatly impairs law enforcement and prosecution offices activities, which often need prompt inputs to conduct effective investigations.

10) The absence of common criminal databases

No common criminal database has yet been established between Croatia and other countries on OC. In fact, even though there is a national centralised database, which contains information about persons wanted for participating in organised criminal groups, a foreign police officer cannot access the information contained in the database. Information related to persons convicted for participating in organised criminal groups has not yet been collected in a national centralised database.

The absence of such instruments impedes a rapid exchange of information with foreign colleagues on people wanted/convicted for participating in OC groups.

11) The inadequate adoption of good practices of international cooperation

Croatia has not yet adopted a large part of the good practices indicated by European and international standards on international cooperation, including very important ones such as:

- providing the requesting/requested authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing/issuing the request;
- giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authorities how the difficulty may be overcome;
- direct sending of procedural documents.

These omissions might slow down the cooperation process with other countries, as these practices have proven to be very important to carry out effective international assistance.

12) The absence of interagency coordination protocols

In Croatia there are no interagency coordination protocols. The experience of the countries that have adopted these protocols (France and Finland, for instance), show that they facilitate a climate of cooperation and the sharing of data among the different national agencies involved in the cooperation process (e.g. police, judiciary, customs, frontier guards, and so on), which is essential to have a complete picture of OC to communicate to the foreign counterparts.

4.4. OTHER OBSTACLES MENTIONED BY THE EXPERTS

13) Obstacles to investigating organised crime

The experts interviewed mentioned the following as the most significant obstacles to investigating organised criminal groups:

- use by OC groups of dummies; i.e. people who have apparent, but no real power over the criminal member's assets.
- lack of human resources within the offices participating in organised crime investigations;
- lack of material resources within the offices participating in organised crime investigations;
- high turnover of specialised personnel participating in OC investigations.

14) Obstacles to police assistance

The experts interviewed mentioned the following as the most significant obstacles to *police assistance* received by Croatia from other countries in pre-trial investigations into transnational organised crime:

- language problems.

15) Obstacles to judicial assistance

The experts interviewed mentioned the following as the most significant obstacles to *judicial assistance* received by Croatia from other countries in pre-trial investigations into transnational organised crime:

- delay of response to requests for assistance;
- lack of recognition of orders (e.g. arrest warrants) issued by prosecutors/investigating judges of another country;
- language problems;
- lack of human resources;
- lack of financial resources;
- lack of training.

5. RECOMMENDATIONS

5.1. RECOMMENDATIONS ON LEGISLATION

Recommendation n. 1

'Enacting the definition of trafficking in persons'

Background and rationale

At the moment the definition of trafficking in human beings, which should have entered into force in January 2004 and was consistent with the UN Protocol, has not been applied because the Constitutional Court of Croatia did not the amendments of the Criminal Code containing it. Thus, there is still a variety of norms that provide some legal basis to penalise this conduct, but are only effectively applied by judges and prosecutors who have experience of the problem. This lack of harmonisation with the international standards on trafficking in human beings may impair the fight against this phenomenon and the relative cooperation with foreign authorities.

Recommendation

Action should be taken to enact the criminal definition of trafficking in human beings in accordance with the provisions of the UN Protocol on trafficking in persons, which enable prosecutors and judges to more easily identify trafficking and slavery like patterns.

Implementing measures

The Croatian Parliament might consider passing the new draft of amendments on the Criminal Code, which includes the criminal offence 'Trafficking in persons'.

Recommendation n. 2

'Improving the confiscation regime'

Background and rationale

The Croatian confiscation regime is both property and value based and characterised by an all-crime approach. However, it is not possible to put the *onus probandi* on the defendant in order to show the legal origin of his/her assets. It is always up to the prosecutor to prove this with a high evidentiary burden. Furthermore, conviction is always a prerequisite before confiscation can be applied, thus making confiscation impossible in the early stages of the proceedings.

Recommendation

Action might be taken to improve the confiscation regime.

Implementing measures

Croatian legislators should enact appropriate legislation easing the burden of proof of the prosecutors and allowing early intervention on criminal assets. This could be achieved by making confiscation available in a separate civil/administrative proceeding.

Recommendation n. 3

'Ratifying the 1981 COE Convention and improving relationships with Europol'

Background and rationale

Croatia has not yet ratified the 1981 COE Convention (signed in 1981) and relative data protection provisions. Furthermore, it has not concluded agreements with Europol within the framework of police and judicial cooperation containing provisions to protect personal data. The absence of such legal instruments obstructs police and judicial cooperation with the countries that have enacted a data protection regime and are party to the 1981 COE Convention.

Recommendation

Action should be taken to ratify the 1981 COE Convention and reach an agreement with Europol.

Implementing measures

Croatian Parliament should complete the ratification of the 1981 COE Convention and the Croatian government should conclude an agreement with Europol on this issue.

Recommendation n. 4

'Enhancing direct channels of police and judicial cooperation'

Background and rationale

Croatian police officers cannot legally send bank, phone, and criminal records directly to a foreign counterpart. There are no direct legal obligations for prosecutors/investigative judges to execute search warrants or freezing and confiscation orders for foreign colleagues. Finally, there are no liaison magistrates stationed by Croatia in foreign countries, so that Croatian letters of rogatory are vaguely addressed to a 'competent state body'.

All these gaps slow down the cooperation process with foreign authorities investigating criminal networks in Croatia and might represent an obstacle for effectively fighting TOC activities in the Region.

Recommendation

Action should be taken to enhance direct channels of cooperation for Croatian police officers and prosecutors/investigating judges.

Implementing measures

- Direct police cooperation should be promoted by giving the legal possibility to police officers to directly send bank, phone, and criminal records if requested by a foreign counterpart.
- Croatian prosecutors should be given the legal possibilities and the material means (e.g. by forming a dedicated department) to execute search warrants and freezing and confiscation orders for foreign colleagues.
- Liaison magistrates should be stationed to foreign countries in order to expedite the cooperation process.

5.2. RECOMMENDATIONS ON PRACTICES

Recommendation n. 5

'Improving technological equipment available to police officers/prosecutors'

Background and rationale

Computer networks (intranet) are available to all police officers. However, official e-mail accounts are not available to all Croatian prosecutors and police officers.

Recommendation

Action should be taken to improve the technological equipment available to police officers and prosecutors/ judges investigating TOC cases.

Implementing measures

All prosecutors/investigating judges and police officers investigating TOC cases should be provided with a computer network and an official e-mail account by their Agency.

Recommendation n. 6

'Providing prosecutors investigating TOC cases with readily available translators'

Background and rationale

Croatian prosecutors do not have readily available translators for the documents coming from a foreign country in answer to a cooperation request.

Recommendation

Action should be taken to provide readily available translators for prosecutors investigating TOC cases.

Implementing measures

A 'translation service' should be established to provide fast and secure translation of documents coming from a foreign country in answer to a cooperation request.

Recommendation n. 7

'Improving the level of training of prosecutors in investigating TOC cases'

Background and rationale

The level of training of prosecutors in investigating TOC cases is low.

Recommendation

Action should be taken to provide training in investigating TOC.

Implementing measures

Training courses and seminars should be organised considering the most relevant forms of TOC.

Recommendation n. 8

'Promoting cooperation with international and regional organisations'

Background and rationale

There is no cooperation between Europol, Eurojust and EJM, and Croatia. These regional organisations could enhance data exchange and cooperation among the European countries, but the lack of cooperation agreements or protocols impedes this form of cooperation.

Recommendation

Action should be taken to promote cooperation with Europol, Eurojust and EJM.

Implementing measures

New operative protocols should be developed between Croatian police agencies and Europol, Eurojust and EJM in order to strengthen their cooperation in the areas of competence of these organisations

5.3. RECOMMENDATIONS ON GOOD PRACTICES

Recommendation n. 9

'Speeding up cooperation through central authorities'

Background and rationale

It takes more than two months to get an answer to an assistance request made through central authorities. This might be due to the fact that direct channels of cooperation are not fully exploited in Croatia. The lengthiness of the procedure is a deficiency that greatly impairs law enforcement and prosecution offices activities, which often need a prompt input to conduct effective investigations.

Recommendation

Action should be taken to speed up the process of cooperation through central authorities.

Implementing measures

Croatian prosecutors and police officers involved in TOC cases should also try to use direct channels of cooperation. The use of these alternative routes may relieve central authorities of a certain amount of work, thus speeding up the cooperation process.

Recommendation n. 10**'Establishing common criminal databases'***Background and rationale*

No *common* criminal database has yet been established in Croatia on OC. In fact, even if there are two working national centralised databases, which contain information about persons wanted/convicted for participating in organised criminal groups, a foreign police officer cannot directly access the information contained in them.

The absence of such instruments impedes the rapid exchange of information with foreign colleagues on people wanted/convicted for participating in OC groups.

Recommendation

Action should be taken to establish common criminal databases

Implementing measures

The existing national centralised databases, which contain information about persons wanted/convicted for participating in organised criminal groups, should be made accessible on-line to foreign police officers and prosecutors, provided that guarantees for data protection are respected. This would allow a faster data exchange on TOC.

Recommendation n. 11**'Enhancing *modi operandi*/methods in the international cooperation process'***Background and rationale*

Croatia has not yet adopted a large part of the good practices indicated by European and international standards on international cooperation. This might slow down the international cooperation process, as these practices have proven to be essential for these purposes.

Recommendation

Action should be taken to enhance the *modi operandi*/methods in the international cooperation process.

Implementing measures

Croatian authorities dealing with mutual legal assistance should adopt the following good practices:

- providing the requesting/requested authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing/issuing the request;
- giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authorities how the difficulty may be overcome;
- direct sending of procedural documents.

Recommendation n. 12

'Setting up interagency coordination protocols'

Background and rationale

In Croatia there are no interagency coordination protocols. The experience of the countries that have adopted these protocols (France and Finland, for instance), show that they facilitate a climate of cooperation and the sharing of data among the different national agencies involved in the cooperation process (e.g. police, judiciary, customs, frontier guards, and so on), which is essential to have a complete picture of OC to communicate to the foreign counterparts.

Recommendation

Action might be taken to set up interagency coordination protocols.

Implementing measures

A structure should be established where all Croatian agencies dealing with OC cases can work together ('under the same roof') and share their information on OC. This structure should also be used to communicate and exchange information with similar foreign structures or other foreign colleagues seeking information on OC in Croatia.

5.4. OTHER RECOMMENDATIONS FROM THE EXPERTS

Recommendation n. 13

'Providing direct and continuous communication between judicial authorities'

Background and rationale

During pre-trial investigations in TOC cases there may be delays in the response due to replication and multiplication of requests for assistance. This is due to the lack of communication between judicial authorities.

Recommendation

Action should be taken to provide direct and continuous communication between judicial authorities.

Implementing measures

The structure mentioned in Recommendation n. 12 could also serve the purpose of communicating at an intra-agency level.

6.5.

HUNGARY³⁰⁰

INTRODUCTION

The distribution of power has greatly changed in the country since the democratic elections of 1989. An economic transition to capitalism has taken place and most state-owned property has been transferred into private hands. As it has occurred in other countries engaging in a similar process of transition, the complex social and economic changes involved have also affected crime. Before 1990 the greatest expression of organised crime consisted of burglaries, while in the 90s criminal organisations moved their affairs towards other kinds of activities, such as drug trafficking, car theft, human trafficking, smuggling and counterfeiting.³⁰¹

Formerly under the Soviet hegemony, Hungary is now a parliamentary republic, which held its first multiparty elections in 1990. It has been a UN member since 14.12.1955 and a COE member since 6.11.1990. It joined NATO in 1999 and is scheduled to accede to the EU on 1 May 2004.

The Hungarian Constitution was last amended in 1997. The National Criminal Code was enacted as Act IV of 1978 and has been recently amended.

As to law enforcement structures, there is a specialized unit against organized crime in the Ministry of Interior, called the 'Directorate against Organized Crime', which is specialized in carrying out investigations into criminal activities typically related to organized crime. Act CXXVI of 2000 also establishes the tasks and structures of a new Coordination Centre against Organized Crime.

1. THE ORGANISED CRIME SITUATION

1.1 FEATURES OF THE ORGANISED CRIMINAL GROUPS

Differing expert estimates concerning the number of organised criminal groups present in Hungary exist, which testify the difficulty of assessing the scope of an underground phenomenon like organised crime. Some estimates state that 76 groups are operating. According to the same estimates the average number of participants is 26, although 6 groups are believed to have between 100 and 300 members. Half of the groups are much smaller and have between 5 and 10

³⁰⁰ The Hungarian country profile was based, among other materials, on the answers given by the following experts: Mrs. Ildiko Farkas Temesvarine, Prosecutor, Public Prosecutors' Office, Miskolc; Mr. Matyas Hegyaljai, Head, Europol National Unit, Budapest. They answered to two questionnaires: one in autumn 2002 and one in summer 2003. The final revision and updating was carried out by Mrs. Ildiko Farkas Temesvarine in May 2004.

³⁰¹ G. Csoty, *Organised Crime, Drug -Related Crime and Illegal Migration in the Central and East European region*, Civilian Affairs Committee, Nato Assembly, 14 April 1997, p. 1, available at: <http://www.nato-pa.int/archivedpub/comrep/1997/ap84cce.pdf> (last verified on 15 April 2004).

members. Another significant number of groups (28) have between 11 and 30 members. In total, more than 1900 individuals are suspected of being involved in the Hungarian organised criminal scene.³⁰² Other estimates state that there are more than 50 criminal groups operating in the country and that it is impossible to provide an average number of participants. Prosecutorial sources based on past organised crime trials report a smaller number of criminal groups (from 10 to 20), and state that the average number of participants ranges between 2 and 10.

Criminal groups operating in Hungary have a hierarchical structure and half of them have one recognised leader. Several have two leaders.

The ethnicities of those participating in organised crime in Hungary are varied. While more than half of the groups are made up exclusively of nationals, many others are made up of national and non-national members and some of them are constituted exclusively by non-nationals. Non-nationals come from many different countries. The majority are Slovakian, Czech, Romanian, Moldavian and Jordanian. People from the FRY, Ukraine, the Slovak Republic, Turkey, Germany, Albania, Romania and Sub-Saharan Africa also play a role in organised crime.³⁰³ The transit and sale of narcotics are controlled by Albanian, Turkish and Nigerian organized criminal groups.³⁰⁴

Russian criminal groups are also present in the country.³⁰⁵ Uralmash, a powerful Russian criminal group is said to maintain an active branch in the country.³⁰⁶ The capital is the home of a Russian boss, who was defined as one of the most dangerous bosses by the American press. He seems to be involved in a wide range of illicit businesses in the country and is also implicated in a massive recent money-laundering scheme that involved the Bank of New York.³⁰⁷ Russian mafia is thus waiting for Hungary to become a EU member state in order to exploit the resultant opportunities for trafficking.³⁰⁸

³⁰² European Committee on Crime Problems (CDCP), Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime, *Report on the Organised Crime Situation in Council of Europe Member States*, Council of Europe, Strasbourg, December 2000, p. 7, available at: http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/Organised_crime/Documents/Report1999E-2.pdf (last verified on 15 April 2004), p. 17.

³⁰³ Ibidem.

³⁰⁴ U.S. Department of State, *International Narcotics Control Strategy 2003*, March 2004, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2003/> (last verified on 15 April 2004).

³⁰⁵ S. Handelman, 'Thieves in Power: the New Challenge of Corruption', in *Nations in Transit 2001 Report*, Freedomhouse, 2002, p. 46, available at: http://www.freedomhouse.org/pdf_docs/research/nitransit/2001/05_thieves.pdf (last verified on 15 April 2004).

³⁰⁶ Ibidem.

³⁰⁷ A. Purvis, 'Crime Busters', in *Time Magazine Europe*, 8 May 2000, available at: <http://www.time.com/time/europe/magazine/2000/0508/fbi.html> (last verified on 15 April 2004).

³⁰⁸ K. P. Kirk, *Hungary: Trade in Women spurs action by UN*, Network of East-West Women, Budapest, 9 July 2000, available at: <http://www.lists.partners-intl.net/pipermail/women-east-west/2000-September/000475.html> (last verified on 15 April 2004).

1.2. ACTIVITIES OF THE ORGANISED CRIMINAL GROUPS

Hungary's strategic location bordering 7 countries, and its modern communication and transportation systems make it vulnerable to all forms of trafficking offences. In particular Hungary is a well-established conduit for **drug traffickers** who move heroin from Southwest Asia and cocaine from South America to Western European markets.³⁰⁹

Some of the criminal groups particularly involved in this traffic are Albanian, Turkish and Nigerian.³¹⁰ These groups try to disguise their activities with legitimate business enterprises (textile trade, fruit and vegetables export-import, road transport of passengers and freight.³¹¹ In 2000 more than 800 kg of heroin were seized in the country.³¹² On 21 September 2002 two members of an international drug ring were arrested on the Hungarian-Romanian border while attempting to transport 50 kg of heroin which had a market value of almost Euro 2,000,000. The drug was destined for Western Europe: the traffickers, in fact, had already operated in the EU, particularly in the Netherlands.³¹³

Hungary is also used as a conduit for cocaine trafficking. Cocaine from South America heading for Western European markets often stops in the country before proceeding to its destination markets. Budapest airport seems to be one of the major locations through which the substance enters the country.³¹⁴ On 27 September 2002 an international cocaine ring was dismantled which operated as an Italian-Hungarian joint venture. The suspicions of the police were aroused by a consignment of 17 hydraulic cylinders (each weighting several tons) to a firm that officially sold diapers. The cylinders were stuffed with 50 kg of cocaine from Colombia.³¹⁵

Until a few years ago Hungary was only a transit country, nowadays it is also a destination country, because there has been an ever-growing demand for drugs. The police estimate that there are 200,000 drug users in Hungary, of a total population of 10 million.³¹⁶ The national market for marijuana and LSD seems to be satisfied by drugs produced in the country, while heroin and cocaine are imported.

³⁰⁹ U.S. Department of State, *International Narcotics Control Strategy 2003*, March 2004, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2003/> (last verified on 15 April 2004).

³¹⁰ U.S. Department of State, *International Narcotics Control Strategy 2003*, cit.

³¹¹ Hungarian Ministry of Foreign Affairs, *Fight Against Organised Crime*, cit.

³¹² Office for Drug Control and Crime Prevention (ODCCP), *Global Illicit Drug Trends*, United Nations, New York, 2002, p. 100.

³¹³ R. Kupcinsky, 'Albanian Organised Crime in the Czech Republic', in *Crime and Corruption Watch*, 4 October 2002, vol. 2, n. 35, available at: <http://www.rferl.org/corruptionwatch/2002/10/35-041002.asp> (last verified on 15 April 2004).

³¹⁴ U.S. Department of State, *International Narcotics Control Strategy 2002*, cit.

³¹⁵ R. Kupcinsky, 'Albanian Organised Crime in the Czech Republic', cit.

³¹⁶ Hungarian Ministry of Foreign Affairs, *Fight Against Organised Crime*, cit. More detailed data on the growing problem of drug abuse in Hungary can be found in the French report *The Drug Crime Situation in Hungary 2002*, available at: <http://www.diplomatie.gouv.fr/routesdeladrogue/textes/hongrie.pdf> (last verified on 15 April 2004).

Hungary is also a producer of drugs, and in particular: Ecstasy (MDMA), marijuana (produced in western Hungary) and LSD.³¹⁷

Organised crime is also active in **trafficking human beings**. Hungary is mainly a transit country and only secondarily a source³¹⁸ and destination country. Most of the traffic is for prostitution purposes and its victims are women and girls who come mainly from Moldova, Romania, Poland, Serbia and Montenegro, Ukraine, Russia, Bulgaria and China, who may be subject to exploitation in Hungary before being transported on to Western countries.³¹⁹ The 'green border' between Romania and Hungary seems to be one of the most exploited for smuggling and the trafficking of human beings to Hungary,³²⁰ especially with regards the trafficking of Moldavian girls. From Hungary they are trafficked to the Serbia and Montenegro, then to Albania and from there they enter the EU.³²¹ Other women are trafficked from Hungary to Croatia, Slovenia and subsequently Austria. Once in Austria some girls become prostitutes there, while others are trafficked on to Germany, Italy, the Netherlands, France and Switzerland.³²²

Men are also trafficked, although to a smaller extent than women. They are trafficked to Western European markets for the purpose of forced labour and mainly come from Iraq, Pakistan, Bangladesh and Afghanistan.³²³

Criminal groups also seem to be active in other trafficking and **smuggling offences**, such as vehicle trafficking, cigarettes, arms and explosives trafficking. Other crimes they commit are racketeering, forgery, bank frauds and armed robberies.

Computer crimes are also an activity that organised criminals commit in Hungary. Communication systems in the country are modern and the use of the Internet is widespread, especially in the capital. The number of computer frauds discovered by the police in Hungary from 1993 to 2000 peaks in 1998. The number then

³¹⁷ U.S. Department of State, *International Narcotics Control Strategy 2003*, cit. However, according to the French report quoted above, Hungarian criminal organisations mainly import large quantities of amphetamine powder and ecstasy pills from Holland.

³¹⁸ Hungarian victims of trafficking mainly come from the Eastern part of the country. However in the recent years trafficking from Hungary has decreased. See M. Lehti, *Trafficking in women and Children in Europe*, HEUNI Paper n. 18, Helsinki 2003, p. 23–24, available at: <http://www.heuni.fi/uploads/to30c6cjxyah11.pdf> (last verified on 8 April 2004).

³¹⁹ UNICEF/UNOHCHR/OSCE – ODIHR, *Trafficking in Human Beings in South Eastern Europe–Update*, UNICEF, 2003, available at: http://www.osce.org/documents/odihr/2003/12/1645_en.pdf (last verified on 8 April 2004). The Hungarian market for prostitution is estimated as being 10,000 units of whom 500 are minors. See M. Lehti, *Trafficking in women and Children in Europe*, HEUNI Paper n. 18, Helsinki 2003, p. 23–24, available at: <http://www.heuni.fi/uploads/to30c6cjxyah11.pdf> (last verified on 8 April 2004).

³²⁰ J. Kliphuis, 'Hungary: the Shopping Tourists', *Radio Netherlands*, 25 August 2000, available at: <http://www.rnw.nl/special/en/borders/html/hungary000825.html> (last verified on 15 April 2004).

³²¹ IOM, International Organization for migration (IOM), *Victims Trafficking in the Balkans. A Study of Trafficking in Women and Children for Sexual Exploitation to, through and from the Balkan Region*, IOM, Slovak Republic, 1999, p. 35.

³²² US Department of State, *Trafficking in Persons Report*, 2002, available at: <http://www.state.gov/g/tip/rls/tiprpt/2002/10653.htm> (last verified on 15 April 2004), p. 59.

³²³ Ibidem.

decreases in 1999 and 2000.³²⁴ Interestingly enough, notwithstanding the decrease in the total number of computer frauds, the damage caused by them increased substantially in 1998 and 1999. As computer crimes causing no damage might be more typical of single hackers motivated by the challenge of breaking the security of a system, the frauds causing damage may well be connected to criminal organisations and therefore it can be hypothesized that over the last few years there has been an increased involvement of organised crime in this activity.

Like many other countries in the region, which saw every aspect of its social, political and economic life shaken by an 'earthquake', Hungary also went through a period of 'destabilisation' in the early 90s, which allowed **corruption** and criminal infiltration, mainly during the first years of the transition process. The lax controls in the initial period of privatisation meant that those engaged in criminal activities could invest their proceeds in the privatisation process without any great fear of being detected and arrested.³²⁵ Various scandals, linked mainly to oil smuggling and oil bleaching have hit the country over the last 10 years. Allegedly several politicians, together with some organised criminals, had a role in oil and alcohol smuggling. The situation has since changed, the country has stabilised and '*at present, Hungary is slowly running out of the corruption opportunities generated by these social changes. Privatisation is gradually entering its last phase and bank consolidation is about to be completed. Only one significant corruption opportunity remains: public procurement*'.³²⁶ There is, therefore, the risk that powerful criminal organisations will try to profit from the any opportunity to infiltrate the legitimate economy through the public procurement sector.³²⁷ In fact, the 2003 COE and Commission of the European Communities reports indicated corruption related to illegal funding of political parties and favouritism in the awarding of public procurement contracts as significant problems.³²⁸

³²⁴ The information regarding the number of computer frauds in Hungary, as well as the table and the graph, have been drawn by: I. Pergel, *Computer crime in Hungary*, 2002, p. 6, available at: <http://www.itu.int/osg/spu/ni/security/docs/compcrime.hungary.pdf> (last verified on 15 April 2004).

³²⁵ G. Kosztolanyi, 'A Law Unto themselves? White Collar Crime, the Police and Corruption in Hungary. Part One' in *Central European Review*, vol. 2, n. 1, 10 January 2000, available at: <http://www.ce-review.org/00/1/csardas1.html> (last verified on 15 April 2004).

³²⁶ M. Kranitz, 'Corruption in Hungary. Status Report at the End of the Twentieth Century', in *The New Presence*, Internet Edition, February 1999, <http://www.new-presence.cz/99/02/kranitz.html> (last verified on 15 April 2004). According to independent assessments, Hungary ranks among the less corrupt of the post-communist countries, and on the basis of the assessment of Transparency International, Hungary is in the 33rd on the list on world corruption. See BBC Monitoring, *Hungarian slides down on list on world corruption*, 22 January 2003, available at: http://www.globalcorruptionreport.org/download/press/Hungarian_Radio.pdf (last verified on 15 March 2004).

³²⁷ See also World Bank, 'How Hungary escaped Transition Failure and Runaway Corruption', in *Transition Newsletter*, 2001, available at: <http://www.worldbank.org/transitionnewsletter/octnovdec01/pgs15-16.htm> (last verified on 15 April 2004).

³²⁸ Commission of the European Communities, *Comprehensive Monitoring Report on Hungary's Preparations for Membership*, 2003, p.14-15, available at: http://www.europa.eu.int/comm/enlargement/report_2003/pdf/cmr_hu_final.pdf (last verified on 15 April 2004).

Although it seems that criminal organisations are not in control of legitimate economic markets in Budapest,³²⁹ and that the **infiltration of the legitimate economy** has not reached an alarming level, there is suspicion that the financial system is exploited for **laundering** purposes by both local organised crime groups and foreign groups, especially Russian organisations. The Russian organised crime boss Mogielevich, who lives in Budapest, was allegedly accused of being involved in the money laundering scandal that involved the Bank of New York not many years ago.³³⁰ Hungary is vulnerable at the placement, layering and integration stages. One of the reasons is that the economy is still heavily cash based and very expensive goods (such as real estate and luxury cars) can be purchased in cash. Therefore, it is likely that criminals are able to purchase such assets with the proceeds of crime with low risk of being detected. With regards the placement stage, banks seem to be the most vulnerable. Although the government outlawed bearer passbooks on 1 January 2002 because of international pressure from the Financial Action Task Force,³³¹ the banking system still remains the most vulnerable at this stage. Non-banking financial institutions, especially the 2000 *bureaux de change*, also seem to be susceptible to money laundering, because they are not supervised by the government.³³²

2. LEGISLATION AND PRACTICES

2.1. CRIMINAL LAW

Hungary has ratified most of the international and European instruments against organised crime: the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (ratified on 15.11.1996), the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (entered into force on 01.07.2000), and the 1999 Council of Europe Criminal Law Convention on Corruption (entered into force on 01.07.2002). However, it has not yet ratified the United Nations Convention against Transnational Organised Crime and its Protocols (signed on 14.12.2000).

The Hungarian Criminal Code of 1978 has been recently amended in order to update its criminal definitions to internationally recognized standards (especially with regard to sections 137, 175/B and 303 of the CC). However, the translation of the international and European agreements into the national law does not seem to be accurate in all the cases.

³²⁹ C. Fijnaut, *Corruption and Organised Crime in States in Transition (Octopus). Final Recommendations and guidelines for Action*, Council of Europe, 5 October 1998, available at: <http://www.nobribes.org/Documents/HungaryCoEOctopus.doc>

³³⁰ Z. Miklosi, 'Hungary', in *Nations in Transit 2001 Report*, Freedomhouse, 2002, p. 204, available at: http://www.freedomhouse.org/pdf_docs/research/nitransit/2001/16_hungary.pdf.

³³¹ The Financial Action Task Force on Money Laundering (FATF) is an inter-governmental body whose purpose is the development and promotion of policies, at both national and international levels, to combat money laundering. The FATF is currently made up of 29 members and observers. Hungary is not a member yet. See: http://www1.oecd.org/fatf/Members_en.htm#Members

³³² Financial Action Task Force (FATF), *Hungary. Extract from PC-R-EV Annual Report 1998-1999*, 1999, available at: http://www1.oecd.org/fatf/Ctry-orgpages/ecry-hu_en.htm (last verified on 20 May 2004).

The main gap in the Hungarian legislation against organized crime appears to be related to the lack of provisions on the liability of legal persons.

Participation in a criminal association is dealt with by section 34 of Act LXXXVII. of 1998 in force as since 01.03.1999 as a part of the Hungarian Criminal Code (Section 137).³³³ The definition of this criminal activity is rather vague and does not totally agree with the standards set out by the Palermo Convention (art. 5). Participation in a criminal association is a crime, the sanction is 5 years prison. In the case of participation in a criminal association the punishment is more serious, i.e. a longer term of imprisonment than in a case of an individual. In addition to being sentenced to imprisonment, the property originating from the criminal act or obtained during the commission of or in connection with the criminal act shall be confiscated. Property obtained by the perpetrator in lieu of the property from a criminal act shall also be confiscated.

Money laundering was criminalized by Act IX of 1994, in force as of 15 May 1994, which is a part of the National Criminal Code, Section 303.³³⁴ Hungary was listed by the FATF among the 'Non Cooperative Countries and Territories (NCCT)', between June 2001 and June 2002. After this, it enacted new legislation effective from 19 December 2001 to extend the scope of the 1994 provisions to a large number of professions outside the financial sector in line with the relevant European Union Directives. It also introduced an 'all crime approach'. The COE examiners have recently re-assessed the Hungarian provisions against money laundering and evaluated them positively and in line with the standards set out by the international community.³³⁵

³³³ Definition of criminal association (unofficial translation of art. 137 CC): (7) Criminal association comes into being if two or more persons commit crimes in an organized manner or agree thereon, and at least they try to commit one crime but a criminal organization does not come into being; (8) A criminal organization is a group of three or more persons operating in a coordinated manner, established for a longer time period in order to commit deliberate crimes which are punishable with imprisonment of up to five years or over.

³³⁴ Definition of money laundering (unofficial translation of art. 303 CC): (1) Any person who uses a thing – gained in connection with the perpetration of a criminal act which is punishable by imprisonment – in the field of economic activity for the purpose of concealing its origin, in connection with that thing performs any financial or banking operation, commits a felony and shall be punishable with imprisonment of up to five years. (2) The punishment shall be imprisonment between two to eight years if the money laundering is committed a) in a business-like manner, b) in respect of an especially high value, c) as the leader or the employee of a financial institution, an investment enterprise, trustee of an investment fund, accounting house, insurance company or an institution dealing in the organization of gambling, d.) as an official person, e.) as an attorney-at-law. (3) Any person who agrees to commit money laundering shall be convicted of committing a misdemeanour with imprisonment of up to two years. (4) The person who voluntarily reports to the authorities or initiates such a report shall not be punishable for money laundering, provided that the act has not yet been revealed, or it has been only partially revealed. (5) 'Thing' as described in Subsection (1) means 'any document and securities, which provides pecuniary values or competence for the owner'.

³³⁵ Council of Europe, Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV), *Second Evaluation Report on Hungary*, Strasbourg, 13 December 2002, available at <http://www.coe.int> (last verified on 18 February 2004). Financial Action Task Force on Money Laundering (FATF), *Annual Report 2002–2003. Annex E*, Paris, 25 June 2003, p. 8–10, available at http://www.fatf-gafi.org/pdf/AR2003_en.pdf (last verified on 18 February 2004).

Drug trafficking was established by Section 60 of Act XVII of 1993, in force as of 15 May 1993, which introduced Section 282 of the National Criminal Code.³³⁶ These provisions and the general legal framework against drug trafficking are in line with the standards set out by the international community for the fight against drug trafficking and have been considered very tough in the recent reports.³³⁷

Trafficking in human beings was established by Section 43 of Act LXXXVII of 1998, in force as of 01.03. 1999, which is now part of the National Criminal Code Section 175/B.³³⁸ These provisions have been updated to take into consideration the internationally agreed definition given at the Palermo Protocol of 2000, whose detailed elements are now included in the Hungarian definition of trafficking in human beings.

2.2. CRIMINAL PROCEDURE

The Hungarian procedural framework against organised crime is characterised by advanced provisions (especially in the area of confiscation and witness protection).

Special means of investigation (interceptions, undercover operations, covert methods such as controlled delivery, etc.) may be deployed in organised crime cases according to the criminal procedure law and the Police Act. Judges decide on

³³⁶ Section 282 of the National Criminal Code: (1) Any person who, in violation of official regulations, produces, manufactures, acquires, possesses, imports into or exports narcotic drugs from Hungary, or transports such substances through the territory of Hungary, commits a felony offence and is punishable with imprisonment of up to five years. (2) Any person who, in violation of official regulations, offers or supplies narcotic drugs, or is engaged in the distribution, trafficking or dealing of such drugs, commits a felony offence and shall be punishable with imprisonment between two to eight years. A long list of aggravating factors (section 282) and mitigating factors (section 282a) are provided by law. For example, the punishment is not as serious if the perpetrator is a drug-addict.

³³⁷ U.S. Department of State, *International Narcotics Control Strategy Report 2002*, March 2003, available at <http://www.state.gov/g/inl/rls/nrcrpt/2002/html/17949.htm> (last verified on 18 February 2004).

³³⁸ Definition of trafficking in human beings (unofficial translation of art. 175/B CC): (1) Any person who sells, purchases, conveys or receives another person or exchanges a person for another person, as well any person who in order to do it recruits, transports, provides accommodation, conceals, or appropriates for another party, commits a felony offence and shall be punishable with imprisonment of up to three years. (2) The punishment shall be imprisonment between one to five years if the criminal act is committed a) against a person under the age of eighteen, b) against a person deprived of personal freedom, c) for the purpose of forced labour, d) for the purpose of sodomy or sexual intercourse, e) for the purpose of illegal use of a human body, f) as part of a criminal association, g) in a business like manner. (3) The punishment shall be imprisonment between two to eight years if the criminal act is committed a) against a person under the tutelage, guardianship, supervision or medical treatment of the perpetrator, or b) for the purpose of the cases described in Subsection (2) from c.) to e.) points 1. by violence or menace, 2. by leading somebody into error, 3. by tormenting the aggrieved party. (4) The punishment shall be imprisonment between five to ten years if the criminal act is committed a) against a person described in Subsection (2) a.)–b.) points, or in Subsection (3) a.) point for the purposes described in Subsection (2) from c.) to e.) points, respectively by the manner described in sub points 1.–3. of b.) points, in Subsection (3), b) for the purpose of making prohibited pornographic photographs. c.) by the manner described in sub points 1.–3. of b.) point, in Subsection (3). (5) The punishment shall be imprisonment between five to fifteen years or life if the criminal act is committed against a person under the age of twelve a) for the purpose described in Subsection (2) c.)–e.) points, b) by the manner described sub points 1.–3. of b.) point, in Subsection (3), c) for the purpose of making prohibited pornographic photographs. 6) Any person making preparations to engage in trafficking in human beings commits a misdemeanour offence and shall be punishable with imprisonment of up to two years.

the application of interceptions (telephone, internet, fax), while the investigative agencies decide upon audio or video recording of events taking place on private premises and undercover operations. A prosecutor may authorise covert methods such as controlled delivery.

Property and value confiscation is permitted for all crimes, with the prerequisite of conviction. One innovative provision is that national legislation allows the reversal of the burden of proof, so placing on the defendant the onus to show the legal origin of his or her assets.

Hungarian legislation (Act LXXXV of 2001 on the Protection Program) provides for physical protection of witnesses and persons who give assistance to the judiciary. This protection also extends to the means through which a testimony can be given: communications technology, such as video links, is deployed to protect the safety of the witness.

2.3. DATA PROTECTION RULES

Hungary has ratified the 1981 COE Convention for the Protection of Individuals with regards to the Automatic Processing of Personal Data on 08.10.1997, but not its Additional Protocol. It has also concluded bilateral agreements within the framework of police cooperation including specific provisions for personal data protection with the following countries: Albania, Bulgaria, Croatia, Czech Republic, Moldova, Poland, Romania, Slovakia, Slovenia, Turkey, Austria, Belgium, France, Germany, Greece, Ireland, Italy, The Netherlands, Spain, Sweden, the United Kingdom. Most notably, it has concluded a formal agreement regarding the transmission of personal data by and to Europol.

The national legal framework for the protection of personal data consists of Act LXIII of 1992 on the Protection of Personal Data and Disclosure of Data of Public Interest.³³⁹ This law applies to both law enforcement agencies and prosecution offices. They are duty-bound to make sure that personal data are not further processed in a way that is incompatible with the purposes for which data were collected. Specific security measures apply. These are not only organisational, but also technological. For instance, personal data are available only through a security code and the entry to the system is recorded. Even stricter rules apply to classified data. Individual judges/prosecutors, members of the administrative staff and, more in general, each person who enters into contact with personal data, are responsible for the application of data protection rules during the investigations. Unlike law enforcement agencies, prosecution offices are not allowed to transfer personal data to countries that are not party to the 1981 COE Convention.

The authority, which supervises the respect of data protection rules, is the Parliamentary Commissioner for Data Protection and Freedom of Information, which has the power to bring violations of data protection rules to the attention of competent judicial authorities and to make recommendations. This authority is

³³⁹ The text of Act LXIII of 1992 on the Protection of Personal Data and Disclosure of Data of Public Interest is available on the CD '*Legal Materials*' attached to this report.

independent as the Head of the office is elected by Parliament and responsible to the Members of the Parliament.

2.4. MULTILATERAL AND BILATERAL INSTRUMENTS

a) Legislation

Hungary has signed and ratified several international and European instruments for judicial and police cooperation: the European Convention on Extradition (1957 COE – ETS 024), the First additional Protocol to the European Convention on Extradition (1975 COE – ETS 086), the Second additional Protocol to the European Convention on Extradition (1975 COE – ETS 098), the European Convention on Mutual Assistance in Criminal Matters (1959 COE – ETS 030) and its first Additional Protocol (COE – 099).

In addition, Hungarian police officers and prosecutors may make use of the international cooperation provisions provided for in the following specific instruments against organised crime: the United Nations Convention against Illicit Traffic of Drugs and Psychotropic Substances (1988), the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990, COE – ETS 141), and the Criminal Law Convention against Corruption (1999 COE – ETS 173).

Hungary also entered into bilateral and multilateral agreements regulating international judicial assistance with the following SEE countries: Albania (1960), Bulgaria (1967), the Czech Republic (1991), Serbia–Montenegro (1969), Poland (1960), Romania (1959), Slovakia (1991) and Turkey (1983). It also entered into bilateral judicial relations with the following EU countries: Austria (1976), Belgium (1983), Finland (1982), France (1982), Greece (1981), Italy (1981), Spain (1988), and Sweden (1986).

Besides this international framework, Hungarian prosecutors and investigating judges are obliged to respond to foreign assistance requests according to the provisions of the Act XXXVIII of 1996, provided that the dual criminality requirement is fulfilled.

b) Practices

In the practice of the experts interviewed the instrument of cooperation most used by Hungarian prosecutors is the European Convention on Mutual Assistance in Criminal Matters and its Protocols. Also the European Convention on Extradition and its protocols and the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and the United Nations Convention against Illicit Traffic of Drugs and Psychotropic Substances (1988) are sometimes used, while and the Criminal Law Convention against Corruption (1999 COE – ETS 173) is rarely used.

Also used are the majority of the above-mentioned bilateral agreements on judicial assistance with the exceptions of Albania, Serbia and Montenegro, Turkey, Denmark, Greece, Ireland, Luxembourg, and Portugal.

2.5. DIRECT CHANNELS OF POLICE AND JUDICIAL COOPERATION

a) Legislation

Both prosecutors/investigating judges and police officers can enter into direct contact with their counterpart colleague of foreign countries according to formal agreements. In particular direct judicial cooperation is assured with the Czech Republic and Slovakia. Direct police cooperation agreements are more numerous and are stipulated with all SEE countries (with the exceptions of Bosnia and Herzegovina, FYRoM, and Serbia and Montenegro) and with the following EU countries: Austria, Belgium, Germany, Ireland, Italy, Spain, Sweden and the United Kingdom. Furthermore, the agreement between Hungary and Europol facilitates direct contacts between Hungarian authorities and those of all EU countries.

Hungarian prosecutors/investigating judges, when directly contacted by colleagues of another country asking for assistance, are not obliged by law to forward the request for assistance to their competent colleagues, if they have no jurisdiction to implement the request. When they are competent however, they are obliged to summon the witnesses and the experts, whose testimony under oath is requested for by colleagues of a foreign country. Also other pieces of information and evidence can be collected by a foreign prosecutor investigating in Hungary, because Hungarian prosecutors are obliged by law to execute freezing or confiscation orders, search warrants, and to forward extracts of bank records and criminal records, when a specific request is made. Hungarian prosecutors are also obliged to provide assistance regarding all the special and ordinary means of investigation available in Hungary, provided that domestic legislation requirements are fulfilled.

With regards to direct cooperation and exchange of information with Hungarian police officers, they are obliged by law to forward requests for assistance to competent colleagues, which they have no jurisdiction over. They can also directly send copies of bank and phone records, documents related to vehicle ownership and documents related to criminal records. Finally, when foreign police officers start a shadowing operation in their country they can be authorised to continue it within the borders of Hungary.

However, when Hungarian police gather information on a transnational organised crime ring that could be useful to develop an investigation in another country, they are not obliged by law to forward that information to the authorities of the other country.

b) Practices

Hungarian prosecutors/investigating judges enter into direct contact with prosecutors/investigating judges of other countries, also in the absence of agreements/legislation for direct judicial cooperation. After the direct connection, however, the request must be repeated in an official manner to the Prosecutor General's Office. This kind of cooperation takes place with Poland, Slovakia and The Netherlands.

Police officers are informed of the possibility of being able to cooperate with police officers of other countries when an agreement is in place. They can also enter into direct contact with police officers of other countries even if a formal agreement is not in place.

Another channel for direct police cooperation are the liaison officers, posted to Europol (2002), SECI Center (2000), Russia (1997), Ukraine (1996), and Germany (1999), who cooperate in international cases by providing direct links with foreign law enforcement authorities and by helping in the exchange of information and statistics.³⁴⁰ Their work is deemed to be highly useful for law enforcement agencies, because of their local and personal contacts. They know Hungarian legislation and practice and at the same time they have more information about the countries where they are posted. Finally, they can also be contacted very easily by mobile phone.

No international joint customs surveillance operations are carried out in Hungary, but two acts have been recently enacted to allow joint investigative teams.

The practical possibilities for direct cooperation between Hungarian prosecutors/police officers and their foreign counterparts are enhanced by the presence of readily available translators and by the level of training, which is deemed to be good. However, there is a partial absence of computer equipment (computer networks and e-mail accounts) and a more general lack of human and financial resources. It is to be remarked that since the beginning of 2004 Internet access and an official e-mail box is provided for every prosecutor.

2.6. INTERNATIONAL AND REGIONAL ORGANISATIONS

a) Legislation

Interpol is not the normal instrument used by Hungarian police officers for identifying their competent counterparts in foreign countries, as this is made through the Law Enforcement Cooperation Centre. However, the Hungarian Interpol National Bureau provides the police of other countries with the following acts of cooperation, when requested:

- information regarding investigations of crimes committed in Hungary;
- information on investigations aimed at tracing goods located in Hungary, which are related to a crime committed abroad;
- information regarding Hungarian criminal records;
- information related to the ownership of vehicles and regarding driving licenses issued in Hungary;
- information regarding the ownership of Hungarian phone numbers.

b) Practices

According to the practice of our experts, the degree of cooperation between Hungary and the international/European organisations relevant for police cooperation is quite good not only with Interpol, but also with respect to Europol. The cooperation with Eurojust is meant to begin in 1 May 2004, and a liaison

³⁴⁰ No liaison magistrates are stationed by Hungary. The identification of competent counterparts occurs using a list, which is present in each County Prosecutor's Office.

magistrate is already stationed at Eurojust. On the contrary, there is no contact at all with EJM. The following tables illustrate the level of cooperation (where 0=no cooperation, 1=low level of cooperation, 2=medium level of cooperation and 3=high level of cooperation) in the different areas in which they operate. This evaluation is based on the personal judgement of the experts interviewed.

TABLE 8. DEGREE OF COOPERATION BETWEEN HUNGARY AND INTERPOL

Exchange of strategic and operational information	3
Exchange of financial information on suspected corporate entities	3
Provision of direct contacts with local law enforcement authorities	3
Provision of direct contacts with local prosecution offices	3
Exchange of information on investigative procedures and crime prevention methods	3
Training initiatives	2
Advice and support in individual investigations	2
Exchange of liaison officers	1
Participation in joint investigative teams in a support capacity	1
Participation in joint investigative teams in an operative capacity	1

TABLE 9. DEGREE OF COOPERATION BETWEEN HUNGARY AND EUROPOL

Exchange of strategic and operational information	3
Exchange of financial information on suspected corporate entities	3
Provision of direct contacts with local law enforcement authorities	3
Provision of direct contacts with local prosecution offices	3
Exchange of information on investigative procedures and crime prevention methods	3
Training initiatives	3
Advice and support in individual investigations	3
Exchange of liaison officers	3
Participation in joint investigative teams in a support capacity	1
Participation in joint investigative teams in an operative capacity	1

3. GOOD PRACTICES

3.1. STRUCTURES SET UP FOR INTERNATIONAL COOPERATION PURPOSES

Both police officers and prosecutors normally have to channel their requests for assistance through central authorities, which are the Hungarian Law Enforcement Cooperation Centre for police cooperation and the Prosecutor General's Office for judicial cooperation. The Prosecutor General's Office also has a department that is devoted solely to international cooperation.

The above-mentioned central authorities have translators readily available for the following languages: English, French and German. Requests for assistance are sent by mail and fax. A national standard form exists which is used by prosecutors/investigating judges to ask for international assistance.

The time necessary to receive an answer to an assistance request is rather long (more than two months). This is a factor that greatly impairs the possibilities of cooperation through national centralised authorities.

3.2. DATABASES ON ORGANISED CRIME

Hungary is well advanced as far as databases and access to them by foreign police officers is concerned. At the moment there are two national centralised databases, which contain information about persons wanted and convicted for participating in OC groups. Both of them are accessible by foreign police officers via the Hungarian law Enforcement Cooperation Centre.

No common criminal databases have yet been established to directly share the OC information collected in Hungary with foreign counterpart colleagues.

3.3. MODI OPERANDI/METHODS IN THE INTERNATIONAL COOPERATION PROCESS

Hungary has enacted the following *modi operandi*/methods in order to speed up the international cooperation process:

- acknowledgement of all requests and written enquiries concerning the execution of requests;
- providing the requesting authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing the request;
- setting priority to requests which have clearly been marked 'urgent` by the requesting authority;
- stating the reasons for the urgency or deadline;
- ensuring that requests are submitted in compliance with the relevant treaty or other international arrangements;
- compliance with the formalities and procedures expressly indicated by the requesting member state;

- the protection of personal data provided in response to a request;

Besides these commonly accepted good practices, Hungary has also enacted the following:

Investigative powers of customs officers

Hungarian Customs investigative powers started in 1978. Hungary has recently enacted a law which expands these powers to a higher number of crimes (including drug abuse). This is an important step, because customs can continue the investigations when they discover illicit activities through the borders so speeding up the procedure without violations of the criminal procedure.

A good practice that has developed as a consequence of this innovation is the following. As police still retain investigative powers in internal investigations, in order not to overlap in their assignments, police and customs established common teams, made up of customs and police officers, so that they do not duplicate their efforts. Furthermore, they hold regular meetings to exchange information.

The International Law Enforcement Cooperation Centre (ILECC)

The ILECC was established with Act LIV of 2002 ('On International Cooperation of Law Enforcement Agencies'). The ILECC represents a useful reference point for foreign police officers, customs officers and public prosecutors investigating transnational organised crime cases in Hungary, because its structure encompasses representatives from all the relevant agencies in Hungary: Interpol (23 persons), International Relations Department (15 persons), International Telecommunication and Message Response Division (13 persons) and Europol Project Bureau (3 persons). ILECC is also the national focal point for the SECI Center. ILECC also has border guard officers, and they started to establish the Hungarian SIRENE Office within the ILECC.

The ILECC is an example of how to create a National Focal Point for interagency cooperation and international cooperation in Criminal Matters. This organisation is very useful in cases of international cooperation in criminal matters, because before its establishment the process of exchanging information with other foreign agencies was lengthy as it was carried out only through rogatory letters. Now the ILECC provides very important information (e.g. ownership/ existence of companies, criminal records of individuals, registered stolen vehicles and other items) with much faster procedures and the law states that the information can be used in court proceedings.

4. EMERGING OBSTACLES

The analysis of legislation, practices and good practices relevant for international cooperation against organized crime has highlighted some shortcomings that are reported here for the sake of clarity, as they represent the background and rationale for the recommendations included in paragraph 5.

4.1. OBSTACLES IN LEGISLATION

1) The lack of provisions on liability of legal persons

One of the most evident gaps in the legal framework against organised crime in Hungary is the lack of provisions related to the liability of legal persons involved in criminal activities. This legal shortcoming is even more serious in the view of the high level of infiltration of organised criminals in legitimate activities and the exploitation of these covers to carry out criminal deeds (e.g. use of casinos, real estate sector and so on to launder money).

2) The vagueness in the criminal definition of organized crime

Despite recent legislative efforts, the definition of organised crime contained in art. 137 CC only partially reflects internationally agreed standards. Both the objective and the subjective elements of the definition are loosely defined in comparison to the provisions of art. 5 of the 2000 UN Convention. The vagueness of the terms may make the identification of criminalized conducts and application of the norm by prosecutors and judges more difficult.

3) The lack of bilateral agreements with some neighbouring countries

Hungary has not concluded bilateral agreements for direct police cooperation with Serbia and Montenegro and has not concluded bilateral agreements for direct judicial cooperation with Croatia and Slovenia.

Although the multilateral agreements signed by Hungary covers most of the issues related to judicial and police cooperation, bilateral agreements could be an useful additional tool, because of the higher level of specificity that is possible to achieve in these kinds of documents (e.g. with regards to criminal definitions, structures involved, etc.).

4) The scarcity of direct possibilities of cooperation

In Hungary there are no legal obligations for prosecutors/investigative judges to forward requests for assistance to competent authorities; neither there are legal obligations for police officers to forward information on TOC rings, which could be useful to foreign colleagues.

Moreover, some of the most useful channels for a fast and direct exchange of information (namely: liaison magistrates and international joint customs surveillance operations) do not exist.

4.2. OBSTACLES IN PRACTICES

5) The lack of technological means for police officers investigating TOC cases

Computer networks (intranet) are not available to all police officers, whereas official e-mail accounts are now available to all prosecutors, but not to all police officers.

4.3. OBSTACLES IN GOOD PRACTICES

6) The lengthiness of assistance procedures through central authorities

It takes more than two months to get an answer to an assistance request made through central authorities. This might be due to the fact that direct channels of cooperation are not fully exploited in Hungary. The lengthiness of the procedure is a deficiency that greatly impairs law enforcement and prosecution offices activities, which often need a prompt input to conduct effective investigations.

7) The partial adoption of good practices of international cooperation

Hungary has not yet adopted a large part of the good practices indicated by European and international standards on international cooperation, including very important ones such as:

- providing the requested authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for issuing the request;
- giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authorities how the difficulty may be overcome;
- stating when the assistance requested is likely to be provided;
- direct sending of procedural documents;
- spontaneous exchange of information;
- joint operational meetings.

These omissions might slow down the cooperation process with other countries, as these practices have proven to be very important to carry out effective international assistance.

4.4. OTHER OBSTACLES MENTIONED BY THE EXPERTS

8) Obstacles to investigating organised crime

The experts interviewed mentioned the following as the most significant obstacles to investigating organised criminal groups:

- lack of human resources within the offices participating in organised crime investigations;
- lack of material resources within the offices participating in organised crime investigations;

9) Obstacles to police assistance

The experts interviewed mentioned the following as the most significant obstacles to *police assistance* received by Hungary from other countries in pre-trial investigations into transnational organised crime:

- lack of human resources;
- lack of financial resources.

10) Obstacles to judicial assistance

The experts interviewed mentioned the following as the most significant obstacles to *judicial assistance* received by Hungary from other countries in pre-trial investigations into transnational organised crime:

- delay of response to requests for assistance;
- lack of financial resources.

5. RECOMMENDATIONS

5.1. RECOMMENDATIONS ON LEGISLATION

Recommendation n. 1

'Establishing liability of legal persons for OC activities'

Background and rationale

One of the most evident gaps in the legal framework against organised crime in Hungary is the lack of provisions related to the liability of legal persons involved in criminal activities. This legal shortcoming is even more serious in the view of the high level of infiltration of organised criminals in legitimate activities and the exploitation of these covers to carry out criminal deeds (e.g. use of casinos, real estate sector and so on to launder money).

Recommendation

Action should be taken to enact provisions dealing with the responsibility of legal persons.

Implementing measures

- Hungarian legislators should include in the criminal code or in the special legislation against organised crime provisions on liability of legal persons engaging in organised crime activities.
- Alternatively, a form of administrative liability for legal persons should be sought in order to make legal persons accountable for their participation in organised crime activities.

Recommendation n. 2

'Refining the definition of participation in a criminal organisation'

Background and rationale

Despite recent legislative efforts, the definition of organised crime contained in art. 137 CC only partially reflects internationally agreed standards. Both the objective and the subjective elements of the definition are loosely defined in comparison to the provisions of art. 5 of the 2000 UN Convention. The vagueness of the terms may render the identification of criminalized conducts and the application of the norm by prosecutors and judges more difficult.

Recommendation

Action should be taken to correct the criminal definition of organised crime and bring it up to UN and internationally recognised standards.

Implementing measures

Hungary should reformulate the criminal definition of organised crime contained in 137 CC taking into consideration the more detailed definition contained in art. 5 of the UN Convention.

Recommendation n. 3

'Concluding bilateral treaties for direct judicial and police cooperation with all neighbouring countries'

Background and rationale

Hungary has not concluded bilateral agreements for direct police cooperation with Serbia and Montenegro and has not concluded bilateral agreements for direct judicial cooperation with Croatia and Slovenia.

Although the multilateral agreements signed by Hungary cover most of the issues related to judicial and police cooperation, bilateral agreements could be a useful additional tool, because of the higher level of specificity that is possible to achieve in this kind of document (e.g. with regards to criminal definitions, structures involved, etc.).

Recommendation

Action should be taken to conclude bilateral treaties for direct judicial and police cooperation with all neighbouring countries.

Implementing measures

Hungary should conclude bilateral agreements for direct police cooperation with Serbia and Montenegro and for direct judicial cooperation with Croatia and Slovenia.

Recommendation n. 4

'Expanding the direct provision and exchange of data'

Background and rationale

In Hungary there are no legal obligations for prosecutors/investigative judges to forward requests for assistance to competent authorities; neither there are legal obligations for police officers to forward information on TOC rings, which could be useful to foreign colleagues.

Moreover, some of the most useful channels for a fast and direct exchange of information (namely: liaison magistrates and international joint customs surveillance operations) do not exist.

Recommendation

Action should be taken to expand the direct provision and exchange of data by Hungarian police officers and prosecutors/investigating judges.

Implementing measures

- Legislation should be enacted to promote a direct exchange of information on transnational organised crime rings that could be useful to develop an investigation in another country and to oblige Hungarian prosecutors/investigative judges to forward requests for assistance to competent authorities.
- Liaison magistrates should be appointed in foreign countries.
- International joint customs surveillance operations should be carried out with foreign countries involved in TOC affecting Hungary.

5.2. RECOMMENDATIONS ON PRACTICES

Recommendation n. 5

'Improving technological equipment available to police officers'

Background and rationale

Computer networks (intranets) are not available to all police officers, whereas official e-mail accounts are now available to all prosecutors, but not to all police officers.

Recommendation

Action should be taken to improve the technological equipment available to police officers and prosecutors/ judges investigating TOC cases.

Implementing measures

All police officers investigating TOC cases should be provided with a computer network and an official e-mail account by their agencies.

5.3. RECOMMENDATIONS ON GOOD PRACTICES

Recommendation n. 6

'Speeding up cooperation through central authorities'

Background and rationale

It takes more than two months to get an answer to an assistance request made through central authorities. This might be due to the fact that direct channels of cooperation are not fully exploited in Hungary. The lengthiness of the procedure is a deficiency that greatly impairs law enforcement and prosecution offices activities, which often need a prompt input to conduct effective investigations.

Recommendation

Action should be taken to speed up the process of cooperation through central authorities.

Implementing measures

Hungarian prosecutors and police officers involved in TOC cases should try to use also direct channels of cooperation. The use of these alternative routes may relieve central authorities of a certain amount of work, thus speeding up the cooperation process.

Recommendation n. 7

'Enhancing *modi operandi*/methods in the international cooperation process'

Background and rationale

Hungary has not yet adopted a large part of the good practices indicated by European and international standards on international cooperation. These omissions might slow down the cooperation process with other countries, as these practices have proven to be very important to carry out effective international assistance.

Recommendation

Action might be taken to enhance the *modi operandi*/methods in the international cooperation process.

Implementing measures

Hungarian authorities dealing with mutual legal assistance should adopt the following good practices:

- providing the requested authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for issuing the request;
- giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authorities how the difficulty may be overcome;
- state when the assistance requested is likely to be provided;
- direct sending of procedural documents;
- spontaneous exchange of information;
- joint operational meetings.

8.6.

MOLDOVA³⁴¹

INTRODUCTION

The Republic of Moldova is located in Eastern Europe between Romania and Ukraine. A former socialist republic of the Soviet Union, Moldova has been an independent republic since 1991, even though Russian forces have remained in the Eastern part of the country and declared it an autonomous Republic called 'Transnistria'. Moldova has been a member of the UN since 02.03.1992 and of the COE since 13.07.1995.³⁴²

The Soviet-era code of 1961 was replaced by the Moldavian Parliament in September 2002, with a new code in force since 12 June 2003. Also the enactment of the new Criminal Procedure Code is very recent, as it was approved on 14 March 2003. The provisions of the new code introduce the concepts of the right to due process, the presumption of innocence, the right to refuse to provide self-incriminating testimony, and offer protection against double jeopardy. Also, the new code will prohibit detention for investigative purposes for a period longer than 12 months for adults and four months for those under the age of 18.

The law enforcement agencies fighting against organised crime are part of the Ministry of the Interior, which has a General Department for combating Organised Crime with three specialised units:

- the Department for Combating Organised Crime;
- the Anti Trafficking in Human Beings Department;
- the Anti-Drug Department.

³⁴² The Moldavian country profile was based, among other materials, on the answers given by the following experts: Mrs. Tatiana Cojocaru, Prosecutor, General Prosecution Office, Chisinau; Mr. Ion Gojan, Deputy Director, Ministry of Interior, Chisinau; Mrs. Larisa Miculet, Head of the Department of Investigations into Financial Economic Crime, General Prosecution Office, Chisinau; Mrs. Rodica Turcan, Head of Section, Ministry of Interior, Chisinau; Gabriela Iordan, Senior Inspector, NCB Interpol in the Republic of Moldova, Chisinau. They answered to two questionnaires: one in autumn 2002 and one in summer 2003. The final revision and updating was carried out by Mrs. Larisa Miculet in May 2004.

³⁴² Detailed information on the main Moldavian democratic institutions and its judiciary are available at: <http://www.legislationline.org> (last verified on 18 February 2004).

1. THE ORGANISED CRIME SITUATION

1.1 FEATURES OF THE ORGANISED CRIMINAL GROUPS

The domestic organised crime situation in Moldova is dominated by about 50 organised criminal groups. The composition of organised criminal groups operating in Moldova is mostly heterogeneous from the points of view of ethnicity and origin. Some of them are formed by nationals and others are formed by individuals from the former Soviet Union (in particular Russia, Ukraine, Georgia, Armenia, Azerbaijan and Chechnya), Hebrews, Gypsies, Bulgarians and Caucasians.³⁴³ Most criminal groups have a hierarchical structure, however a few groups are organised in cells.

Moldova's local crime groups seem to be connected and to cooperate with other groups operating in the country, especially Russians and Ukrainians,³⁴⁴ as well as with organised criminal networks based abroad, in particular in Albania, Bulgaria, Romania, Italy, Portugal and Spain, mostly concerning drug crimes. Moldavian drug traffickers are closely connected with drug traffickers in nearby Eastern European countries. Cooperation with criminal groups in the United States and China is also known to occur.³⁴⁵

Cooperation between local groups and foreign criminal groups also takes place in trafficking in human beings, racketeering, car theft, smuggling of stolen cars and goods smuggling (alcohol drinks, tobacco, petrol, consumer goods).

The increased criminal activity of organised criminal groups has also been influenced by the fact that part of the territory of Moldova is situated on the left bank of River Nistru and forms the so-called phantom Republic of Transnistria.³⁴⁶ This 'Republic' has a border with the Ukraine for a length of about 150 km that is not controlled by the Moldavian authorities and is used by criminal groups for their activities, as well as for hiding from justice.

1.2. ACTIVITIES OF THE ORGANISED CRIMINAL GROUPS

The activities of the organised criminal groups are described as comprising drug production and trafficking, trafficking in human beings, vehicle theft and trafficking, illegal traffic of explosives, illegal activities surrounding prostitution, kidnapping for ransom, money laundering, racketeering, smuggling of cigarettes, smuggling of petrol, usury, production and sale of pirate audio CDs and software, smuggling of cultural artefacts and trafficking of weapons.

³⁴³ European Committee on Crime Problems (CDCP), Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime, *Report on the Organised Crime Situation in Council of Europe Member States*, Council of Europe, Strasbourg, December 2000, p. 7, available at: http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/Organised_crime/Documents/Report1999E-2.pdf (last verified on 27 April 2004), p. 7.

³⁴⁴ U.S. Department of State, *International Narcotics Control Strategic Report 2002*, 2003, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2001/rpt> (last verified on 27 April 2004), p. 71.

³⁴⁵ European Committee on Crime Problems (CDCP), cit., p. 21.

³⁴⁶ 'Organised crime has flourished in Moldova over the past decade, especially in the breakaway Transnistria region', U.S. Department of State, *International Narcotics Control Strategic Report 2002*, cit., p. 71.

As to **drug production and trafficking**, Moldova is considered to be mainly a transshipment point. The country is in fact situated on two of the main heroin routes for illicit drugs from Southwest Asia: one goes from Southwest Asia to Ukraine and from there through Moldova to Western Europe, and the other from Southwest Asia to Turkey through Romania/Moldova into the CIS.³⁴⁷ Periodic seizures indicate that Moldova is also used as a transit route for precursor chemicals moving in the opposite direction, even if recent reports do not show Moldova as a significant country in this sense. These reports instead indicate a statistically significant increase in marihuana seizures in 2003.³⁴⁸ In the view of Moldavian law enforcement officials the importation of synthetic drugs, such as MDMA ('ecstasy') and cocaine, is also on the increase, but cost factors confine these drugs to a limited segment of the Moldavian population..³⁴⁹

The climate of Moldova is favourable for the cultivation of the opium poppy and hemp, particularly in the northern region. This production mostly supplies local consumption and that of neighbouring countries. The cultivation of marijuana is reported to be on the increase.³⁵⁰

Prostitution is one of the illegal activities controlled by organised criminal groups in Moldova and this sex trade has gradually developed into the trafficking of woman. Moldova, because of its geographical location and the current bad economic situation, has emerged as a dominant country of origin³⁵¹ for **trafficking in persons**, in particular women and children.³⁵²

Moldavian victims³⁵³ are mainly trafficked to Romania, which is one of the main gathering points for women and are then further trafficked through many different

³⁴⁷ U.S. Department of State, *International Narcotics Control Strategy 2003*, March 2004, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2003/> (last verified on 27 April 2004). Central Intelligence Agency (CIA), *The 2003 World Fact Book*, 2003, available at the CIA website: <http://www.cia.gov/cia/publications/factbook/geos/md.html> (last verified on 27 April 2004).

³⁴⁸ 'The seizures are, however, too sporadic to indicate whether the transit of narcotics and precursor chemicals through Moldova is increasing or decreasing', U.S. Department of State, cit.

³⁴⁹ U.S. Department of State, cit.

³⁵⁰ Nationmaster.com, *Encyclopedia: Crime in Moldova*, 13 October 2003, available at: <http://www.nationmaster.com/encyclopedia/Crime-in-Moldova> (last verified on 27 April 2004).

³⁵¹ European Commission, 'Combating Trafficking in Women in the Republic of Moldova', in *Final Report. Expert Mission to Moldova*, 2001.

³⁵² M. Lehti, *Trafficking in women and Children in Europe*, HEUNI Paper n. 18, Helsinki 2003, p. 23–24, available at: <http://www.heuni.fi/uploads/to30c6cjxyah11.pdf> (last verified on 27 April 2004). See J. Costachi, 'Preventing Victimization in Moldova', in *Global Issues*, June 2003, available at: <http://www.usinfo.state.gov/journals/itgic/0603/ijge/gj07.htm> (last verified on 27 April 2004). See also UNICEF/UNOHCHR/OSCE, *Trafficking in Human Beings in South Eastern Europe*, UNICEF, 2003, p. 105–122, available at: http://www.osce.org/documents/odihhr/2003/12/1645_en.pdf (last verified on 27 April 2004).

³⁵³ 'Often the victims, most of them between 15 and 25 years old, had lived under poor conditions and/or in rural areas, been abused and undergone stress and traumata. The girls were recruited by individuals or companies such as tourist, employment or wedding agencies. Prices for girls vary from 50 – 200 US \$ in Moldova and reach 400 US \$ in Romania and up to 10.000 US \$ in the Balkans'. European Forum on the Prevention of Organised Crime, *Prevention of Trafficking in Human Beings*, 30 June 2003, available at: http://europa.eu.int/comm/justice_home/fsj/crime/forum/docs/300603_minutes.pdf (last verified on 27 April 2004).

conduits to European countries (primarily Belgium, Germany, Italy and the Netherlands, but also in Turkey, Greece and Spain). Other destination countries for this trafficking appear to be the Balkans (BiH, Macedonia, Albania, Serbia and Montenegro, and Kosovo) and the Middle East (Lebanon, Israel, United Arab Emirates, Pakistan and Afghanistan). The main countries of destination for Moldavian men, exploited for forced labour and begging, are Russia and other neighbouring countries.³⁵⁴ It is also a transit country for trafficking from Ukraine and other countries of the former Soviet Union.³⁵⁵

Criminal networks involved in this business have different levels of organisation (large-scale, medium-scale and small-scale networks) and make huge profits while running a very low risk of punishment.³⁵⁶ Their *modus operandi* is flexible and adapts to the variations in law enforcement activities. For instance, after the increase in anti-trafficking activities in the Region, traffickers invested more in safe travel by air and with legal documents.³⁵⁷ Another emerging feature is the deployment of female traffickers, who are often former victims themselves, and their additional use as 'dummies' for the organisers of the trafficking. They are difficult to detect and apprehend.³⁵⁸

Trafficking in children for illegal adoption is also reportedly widespread in the country and traffickers can operate with impunity because of prevailing corruption and also because of the involvement of the authorities in organised criminal activities.³⁵⁹ Orphans and other institutionalised children are the typical victims of

³⁵⁴ International Organization for migration (IOM), *Victims Trafficking in the Balkans. A Study of Trafficking in Women and Children for Sexual Exploitation to, through and from the Balkan Region*, IOM, Slovak Republic, 1999. See also U.S. Department of state, *Trafficking in Persons Report*, June 2003, available at: <http://www.state.gov/g/tip/rls/tiprpt/2003/21275.htm> (last verified on 27 April 2004).

³⁵⁵ *Ibidem*. See also EUROPOL, *European Union Situation Report on East European Organised Crime*, 2000, p. 16 – 45; iAbolish, 'Moldova Expands Human Trafficking Efforts With More Local Cops', 15 September 2003, available at: <http://www.iabolish.com/news/press-coverage/2003/dpa09-15-03.htm> (last verified on 27 April 2004); British Helsinki Human Rights Group, *Sex Slaves: Trafficking in Human Beings from Moldova to Italy*, September 2001, available at: <http://www.bhhrg.org/CountryReport.asp?ReportID=160&CountryID=16> (last verified on 27 April 2004).

³⁵⁶ European Commission, *Combating Trafficking in Women in the Republic of Moldova. Final Report, Export Mission to Moldova*, 2001.

³⁵⁷ OSCE, *Moldovan Trafficking Victims Become More Isolated and Vulnerable, Says UN-OSCE Report*, 17 December 2003, available at: http://www.osce.org/news/show_news.php?3781 (last verified on 27 April 2004).

³⁵⁸ USAID, *Moldova Antitrafficking Assessment – Critical Gaps in and Recommendations for Antitrafficking Activities*, October 2002, available at: <http://www.widtech.org/Publications/USAID%20Moldova%20Anti-Trafficking%20Assessment.pdf> (last verified on 27 April 2004). See also Home Office, Immigration & Nationality Directorate, *Moldova. Country Report*, October 2003, available at: <http://www.ind.homeoffice.gov.uk/default.asp?pageid=3330> (last verified on 27 April 2004).

³⁵⁹ Corruption, together with poverty and unemployment, remains one of the main root causes of trafficking in persons according to IOM/SIDA, *Migration Management. Moldova*, Assessment 2003, available at: http://www.iom.md/materials/migr_assessment.pdf (last verified on 27 April 2004). See also S. Tavcer, *Causal Factors in the Crime of Trafficking of Women for Sexual Exploitation from Moldova*, Max Planck Institute for Foreign and International Criminal Law, Freiburg, 23 July 2003, available at: http://www.iuscrim.mpg.de/forsch/krim/tavcer_e.html (last verified on 27 April 2004).

this type of trafficking and in some cases the directors of orphanages are reported to give the traffickers information on young girls when they turn 16.³⁶⁰

Another profitable type of trafficking is the **illegal arms trade**, which occurs in particular along the Transdnestr–Ukraine border.³⁶¹ According to Interpol, Transnistria is a storage and trafficking centre for conventional and non conventional weapons and materials left over from the Russian occupation and has been allegedly exploited by Islamic terrorist groups.³⁶²

Wide scale **corruption** is a phenomenon that is characteristic of a country in transition and since the beginning of the 1990s there has been an increase of corruption in the Republic of Moldova.³⁶³ Construction and state inspections seem to be among the most affected sectors, while Chisinau, Cahul, Edinet and Gagauzia are the cities with the highest levels of corruption.³⁶⁴ The activities of organised criminal groups in many sectors of the economy and also the high level of corruption seem to suggest a high prevalence of money laundering activities.³⁶⁵

In Moldova **money laundering**, for the most part, is connected to traditional forms of organised crime activities and sources of illegal proceeds include smuggling of consumer products (cigarettes, alcohol, consumer goods and foodstuffs are smuggled into Moldova and sold on the local market), racketeering, extortion, narcotics trafficking, auto theft, fraud, embezzlement, illegal alien smuggling, pandering and prostitution, corruption and tax evasion. Although Moldova is not a well developed financial centre and is not considered as an international haven for the laundering of illicit proceeds, there are indications that extremely favourable money–laundering conditions exist. Investigations confirm that this type of activity has taken place and that Moldova is a transit country for money laundering.³⁶⁶ Money laundering takes place and it is generally carried out within the country and abroad through various businesses and is invested in commercial enterprises

³⁶⁰ 'The Temporary Centre for Minors in Moscow, Russia, estimates that more than 50 per cent of the children begging on Moscow streets are from Moldova. In 2001, the Russian Ministry of Internal Affairs registered 500 minors trafficked from Moldova to Russia for begging, some of whom had been sexually abused'. IOM, *Trafficking in Women and Children for Sexual Exploitation. Republic of Moldova*, Chişinău, 2002, See also Union Network International, *Child Trafficking in Moldova*, 10 March 2004, available at: <http://www.union-network.org/uniindep.nsf/0/2D1E6666756AC44BC1256E530026A6C1?OpenDocument> (last verified on 27 April 2004).

³⁶¹ SEESAC, *Moldova – Short Mission Report*, 17 – 19 July 2002, available at: <http://www.seesac.org/about/moldova.htm> (last verified on 27 April 2004).

³⁶² Panorama, *Soviet Republic of Transnistria Said Supplying Islamic Terror groups with Arms*, 7 February 2002, available at: http://www.nisat.org/blackmarket/europe/East_Europe/ukraine/2002.02.07-Transnistria%20Said%20Supplying%20Islamic%20Terrorist%20Groups%20With%20Weapons.html (last verified on 27 April 2004). See also SAFER–Net, *Republic of Moldova*, 19 August 2003, available at: http://www.research.ryerson.ca/SAFER-Net/regions/Europe/Mol_JY04.html (last verified on 27 April 2004).

³⁶³ L. Carasciuc, 'Republic of Moldova: Economic Consequences of Corruption', paper presented at the 9th *International Anti-Corruption Conference (IACC)*, 10–15 October 1999, Durban, South Africa, p. 1.

³⁶⁴ Transparency International, *Moldova. Corruption and Tax Evasion: Economic Dimensions*, Chisinau, 2003, available at: http://www.transparency.md/Docs/cor_evaz_fisc_en.pdf (last verified on 27 April 2004).

³⁶⁵ EUROPOL, *European Union Situation Report on East European Organised Crime*, 2000, p. 16 – 21.

³⁶⁶ Ibidem. See also U.S. Department of State, *International Narcotics Control Strategy 2003*, cit.

locally, or transferred to foreign bank accounts.³⁶⁷ Structuring, cash smuggling and the opening of false bank accounts are the methods most widely employed and it is not unusual for money to be laundered using wire transfers and money orders. The major foreign destinations for illegal proceeds are Russia and other countries of the Commonwealth of Independent States, Western Europe and Israel.³⁶⁸

2. LEGISLATION AND PRACTICES

Apart from the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (which entered into force on 01.09.2002), the 1988 United Nations Convention against Illicit Trafficking of Narcotic Drugs and Psychotropic Substances and the 1999 Council of Europe Criminal Law Convention on Corruption (entered into force on 01.05.2004), most of the international and European specific instruments against organised crime have not yet entered into force in Moldova, including the United Nations Convention against Transnational Organised Crime and its Protocols (signed on 14.12.2000, but not yet ratified).

However, the new Criminal Code (approved on 13.09.2002 and entered into force on 12 June 2003) and other special laws criminalize all the main forms of organized criminal activities: participation in a criminal association (art. 284 CC),³⁶⁹ money laundering (art. 243 CC, as modified on 31 July 2003 by Law nr. 353–XV, and art. 3, Law on the Prevention and Combating Money Laundering of 15 November 2001),³⁷⁰

³⁶⁷ 'Moldavian financial institutions – excluding banks in the Transdnister region – are not considered particularly vulnerable to money laundering operations in comparison with other Eastern European countries'. Financial Crimes Enforcement Network in cooperation with INTERPOL/FOPAC, cit.

³⁶⁸ Ibidem.

³⁶⁹ Article 284 (The setting up and leading a criminal organization): The setting up and leading a criminal organization, that is setting up a such organization and the organization of its activities, or seeking and engaging of criminal organization's members, or holding of its members meetings, or setting up of money and other nature funds for financial support and support of organization's criminal activities or equipping of the criminal organization with weapons and instruments for the committing of crime, or organization of the information gathering about potential victims and the law enforcement activities, or coordination of the planes and criminal actions with the others criminal groups and organizations or country's and foreign particular criminals, shall be punished with imprisonment from 16 up to 25 years.

³⁷⁰ Art. 243a (Money Laundering): (1) Committing actions oriented either to attribute a legal aspect of origin and proceeds of money, goods or illicit incomes obtained as result of committing crimes, either for the concealment or falsification of information regarding its nature, origin, movement, placement or affiliation of those money, goods or incomes, about which the person knows that they are proceeds from criminal activity; obtaining, possession or utilization of goods, knowing that they are the proceedings of a crime, participation in any partnership (joining), agreement, complicity though help or advice regarding the committing of the mentioned actions, shall be punished with fine of dimension from 500 to 1000 conventional units (one conventional units is equal to 20 lei or about 1.4 \$) or imprisonment up to 5 years, in both cases with (or without) privation of the right to occupy certain positions or to practice certain activities during the period of time from 2 to 5 years. (2) The same actions committed repeatedly, by two or more persons, by using position, is punished with fine from 1000 to 5000 conventional units or imprisonment from 4 to 7 years. (3) The actions foreseen in paragraph (1) or (2) committed: by criminal organized group or criminal organization; in large proportions is punished with imprisonment from 5 to 10 years.

Art. 3 of the Law on prevention and combating money laundering (Money Laundering): Intentional actions, oriented either to attribute legal aspect of origin and proceeds of money, goods or illicit incomes obtained as result of committing crimes, either for the concealment or falsification of information regarding the

trafficking in human beings (art. 165 and 206 CC),³⁷¹ and drug trafficking (art. 217 CC).³⁷²

The texts of these criminal provisions make it clear that the process of harmonization of substantial criminal legislation to internationally accepted standards is underway in the Republic of Moldova. According to a recent report by the COE, the substantive penal provisions fully meets the legal standards established in the UN Trafficking Protocol and even have some innovative aspects.³⁷³

Art. 21 para. 3 and art. 63 CC establishes the principles and the sanctions, which can be imposed on legal persons.

nature, origin, movement, placement or affiliation of those monies, goods or incomes, about which the person knows that they are proceeds from criminal activity; obtaining, possession or utilization of goods, knowing that they are proceeds from a crime, participation in any partnership (joining), agreement, complicity though help or advice regarding committing of mentioned actions.

³⁷¹ Art. 165, Trafficking of human beings: The recruitment, transportation, transfer, shelter or the receiving of a person with the purpose of commercial or non-commercial exploitation, by work or forced services, in slavery or in conditions similar to slavery, by using him/her in armed conflicts or in criminal activities, of taking organs or tissues for transplant, committed by: § threat or use of physical or psychological violence non dangerous to the life and health of the person, including kidnapping, confiscation of documents and with servitude, for the repayment of a debt whose limits are not defined in a reasonable way; § fraud; § abuse of power, abuse of a position of vulnerability, giving or receiving payments or benefits in order to obtain the consent of a person having control over another person, is punished with imprisonment with 7 to 15 years. (2) The same actions committed: repeatedly; concerning two or more persons; concerning pregnant women; by two or more persons; applying dangerous violence for physical life or psychological health of a person; by using torture, debasing and inhuman treatments to ensure the subordination of a person or by using rape, physical dependence, guns, threaten by divulgation of confidential information to victim family or other persons as well as by other means, is punished by imprisonment from 10 to 20 years. (3) The actions foreseen in paragraph in (1) or (2) committed by a criminal organized group or criminal organization; causing serious damage to body integrity or a psychological health illness to a person or causing a person's death, is punished by imprisonment from 15 to 20 years or life detention.

³⁷² Art. 217, Illegal circulation of drugs: (1) Illegal activity regarding the circulation of drugs, psychotropic substances, that is cultivation of plants that contain drugs or psychotropic, processing or utilizing of such plants, elaboration, production, fabrication, extraction, preparation, holding, keeping, releasing, commercialising, distribution, acquisition, delivery, dispatching, importing, exporting, extermination of drugs, psychotropic substances, controlled by legislation as well as organizing the consumption of such substances without authorisation is punished with a fine of 400 to 700 conventional units or with imprisonment from 2 to 5 years. (2) The same actions committed: repeatedly, by two or more persons, utilising drugs or psychotropic substances that present serious danger human health, is punished with imprisonment from 5 to 8 years. (3) actions foreseen in paragraph (1) or (2) committed: by a criminal organized group or criminal organization, in large proportions, is punished with imprisonment from 8 to 12 years. (4) A person who voluntarily surrenders the drugs or psychotropic substances are exempt of illegal activity concerning their circulation.

³⁷³ For instance, in addition to the 'usual' means used by traffickers to get their victim, the Moldavian criminal code envisages debt bondage and disclosure of confidential information to the victim's family or other persons. M. Giammarinaro, *Opinion and Commentary on the Legal Provisions on Trafficking in Human Beings Applicable in Moldova*, LARA Project – Criminal Law Reform Against Trafficking in Human Beings, March 2003, p. 4. Available at the Council of Europe website www.coe.int (last verified on 18 February 2004).

2.2. CRIMINAL PROCEDURE

In the new Criminal Code there are general and special provisions about confiscation. Goods used to commit the offence or that are the result from the offence can be subject to both property and value confiscation even without a prior conviction (art. 106 CC).³⁷⁴ This applies to all serious crimes and drug trafficking related cases. Furthermore, art. 19 CC provides a special regime for money, valuables or any other assets obtained by the commission of the crime of trafficking or that have been used to commit the crime of trafficking. For both these types of confiscation the so-called 'reversal of the burden of proof' does not apply and the evidentiary burden the prosecutor has to discharge is high because it is equivalent to that necessary for the criminal conviction of a person. Furthermore, there is the necessity of having a court decision establishing that a criminal offence has been committed before confiscation can take place. It is thus impossible to confiscate the proceeds of crime in the early stages of the proceedings, nor is it possible to have confiscation available in an independent proceeding, when the owner of the property is absent, dead or unidentified.

The Code of Criminal Procedure provides for some special means of investigation: interceptions of telephone conversations, audio and video recording of events taking place on private premises, undercover operations, covert methods such as controlled delivery. Only high ranking officials in the Ministry of Interior can authorise the deployment of these special means. An exception concerns audio and video recording, which can be authorised only by a prosecutor. The results of telephone interceptions can be used as evidence only if a criminal file was previously opened. No possibility of interceptions of fax and internet transmission nor use of storefront units is currently envisaged.

Concerning witness protection, the most relevant regulation is stipulated in Law n. 1458 on 26-3-1998 (as amended by Law 126 on 3-5-2001) on state protection of victims, witnesses and other persons who provide assistance in criminal proceedings. These legal provisions are broad enough to be applicable to victims of trafficking who act as witnesses.³⁷⁵ However, no technological means, such as video links, are envisaged to protect a witness giving testimony on organised crime.

2.3. DATA PROTECTION RULES

Moldova has signed (1998) but not yet ratified the COE Convention for the Protection of individuals with regards to the Automatic Processing of Personal Data (1981 COE - ETS 108), nor it has concluded any bilateral agreements within the framework of police and judicial assistance including specific provisions for personal data protection. However, the transmission of data to foreign countries is regulated by the 1959 European Convention on Mutual Assistance in Criminal Matters.

³⁷⁴ In fact, art. 106 establishes a confiscation regime, which is more similar to seizure than confiscation.

³⁷⁵ M. Giammarinaro, *Opinion and Commentary on the Legal Provisions on Trafficking in Human Beings Applicable in Moldova*, cit., p. 5.

More importantly, no agreement currently exists with Europol regarding the transmission of personal data by and to Europol. This gap is thus impairing cooperation with Europol, as the Europol convention requires an agreement, based on an evaluation of the data protection system, in order to exchange data with third countries.

At a national level, some provisions on the protection of personal data are provided for in art. 180 CC, entitled *Infringement of the legislation concerning access to the information*. Art. 7 and 8 of the '*Law concerning Access to Information*' establish a series of restrictions on the access to 'information with of a personal character'³⁷⁶ and also applies to both law enforcement agencies and prosecution offices, who are bound to apply security measures (at the moment only organisational) for the protection of personal data. They cannot process personal data in a way that is incompatible with the purposes for which data were collected. Exceptions may be made on specified grounds by court orders (art. 8, section 8). The head of the specific office, individual judges and prosecutors, members of the administrative staff are responsible for the application of the data protection provisions.

³⁷⁶ Art. 7, Official Information with limited access (unofficial translation): [...] (2) The access to information cannot be restricted. The following exceptions apply: [...] c) Information of a personal character disclosure of which is considered as interference into a person's private life protected by law, access to that data can only be admitted in compliance with the provisions of art. 8 of this law.

Art. 8, Access to information of a personal character (unofficial translation): (1) The information of a personal character are data that refers to an identified or unidentified private person whose disclosure would constitute a violation of one person's privacy, is part of person's confidential information. According to the meaning of this law the data that refers exclusively to the identification of persons do not constitute confidential information (data that is contained in IDs). (2) Suppliers of the information and owners of it are obliged to protect the confidentiality of a person's private life. (3) Protecting a person's private life includes: the necessity to get the agreement of the person whose interests are touched in the process of disclosure of information with personal character; the right to participate in the procedure of taking decisions on personal data referring to oneself in capacity of equal part; the right of keeping the anonymity in case of supplying information of a personal character, with respecting of confidentiality; the right to check and correct inadequate, incorrect, incomplete or irrelevant information; the right to not be identified, automatically, within the framework of the procedure of taking decisions concerning information disclosure; the right to address the Court. (4) Information of a personal character will be: obtained, collected, taken over, kept and used correctly, in the legitimate scope strictly established; truthfully, adequately, pertinently and not in a manner excessively related to goals for which they were obtained; preserved, in a form that will allow to identify the person to which it refers, for a period not less then necessary for achieving the goals for that they were obtained. (5) access to information of a personal character regarding the person itself will be granted to the interested person itself. He/she has the right: to get familiarized with the information personally or in someone's presence and to specify the information to assure its plenitude and veracity; to obtain, if it is the case, information's rectification or liquidation in case if it is treated inadequately; to find out who and for what reasons used, is using or plans to use these information; to take copies of the documents, information regarding him/herself. (6) The suppliers of information will apply the necessary measures in order to protect the information against destruction or their loss, against the access, modification or unauthorized spreading, but these measures shouldn't limit the access to official information in the terms of present law. (7) The suppliers of information can disclosure any information with personal character and that will be requested in compliance with present law only in cases when: the person to whom the information is related to agrees its disclosure; the requested information in its integrity was presented to public (published in compliance with the legislation), before the date of request. (8) If the person to whom the information is related doesn't agree to its disclosure, the access to the information can be allowed only by a Court decision, which proved that the disclosure will be in the public interest, that is referring to protection of people health, public security, protection of environment.

More in general there is an independent supervisory authority (the Centre for Protection of Human Rights), which deals with the respect of data protection rules and has the power to bring violations of data protection rules to the attention of competent judicial authorities and to start legal proceedings. The creation of a specialised national authority is underway, as it is the enactment of a new law on data protection (currently under discussion in Parliament).

2.4. MULTILATERAL AND BILATERAL AGREEMENTS

a) Legislation

Moldova has signed and ratified several international and European instruments for judicial and police cooperation: the European Convention on Extradition (1957 COE – ETS 024), the First additional Protocol to the European Convention on Extradition (1975 COE – ETS 086), the Second additional Protocol to the European Convention on Extradition (1978 COE – ETS 098), the European Convention on Mutual Assistance in Criminal Matters (1959 COE – ETS 030) and its additional Protocol (1978 COE – ETS 099).

In addition Moldavian police officers and prosecutors may make use of the international cooperation provisions provided for in the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990, COE – ETS 141).

At a bilateral level, Moldavia has concluded very few agreements, which regulate international judicial assistance. The only agreements in place are those with Romania (06.07.1996) and Turkey. There are however two draft Memoranda of cooperation with FYRoM and Italy (Direzione Nazionale Anti-mafia).

b) Practices

In the practice of the experts, only the European Convention on Extradition (1957 COE – ETS 024) and the European Convention on Mutual Assistance in Criminal Matters (1959 COE – ETS 030) are often used in practice. The other international instruments ratified by Moldova are never or very rarely used.

2.5. DIRECT CHANNELS OF POLICE AND JUDICIAL COOPERATION

a) Legislation

No agreements or legislation exists, which provides for the direct judicial cooperation of Moldavian prosecutors/investigating judges with those of other countries. There are instead formal agreements that provide for direct police cooperation with the police of the following countries: Hungary, Romania, Turkey, the United Kingdom, Poland, Israel, Latvia, Italy, Belarus, Ukraine, Estonia, The Czech Republic, Uzbekistan and Lithuania.

Provided dual criminality exists, Moldavian prosecutors are obliged by law to respond to foreign assistance requests (art. 18, section 1, CCP) and, when directly contacted by colleagues of another country asking for assistance they are obliged by law to forward the request for assistance to their competent colleagues, if they have not jurisdiction to implement the request. They are obliged to summon the witnesses and the experts, whose testimony under oath is requested for by

colleagues from a foreign country. Other pieces of information and of evidence can also be collected by a foreign prosecutor investigating in Moldova, because Moldavian prosecutors are obliged by law to forward extracts of bank records and criminal records, when a specific request is made. They are also obliged to provide assistance regarding all the special and ordinary means of investigation available in Moldova. The only act of assistance they are not obliged by law to execute is confiscation, but freezing orders and search warrants have to be executed.

With regards to direct police cooperation and exchange of information there is a legal obligation to forward to competent colleagues any requests for assistance, which they have no jurisdiction over. However, even if the Moldavian police gather information on a transnational organised crime ring, that could be useful to develop an investigation in another country, there is no obligation to forward that information to the authorities of the other country. Moldavian police can send copies of documents related to vehicle ownership and criminal records to the police of another country directly, but not copies of bank and phone records. Finally, when foreign police officers start a shadowing operation (i.e. the covert observation of the movements of a person) in their country, they can be authorised to continue it within the borders of Moldavia.

b) Practices

Moldavian prosecutors enter into direct contact with their foreign counterparts even if a formal agreement does not exist. There are no other channels of direct cooperation available as Moldova does not post liaison magistrates to foreign countries.

Operational police cooperation is mainly achieved through Interpol, which is the normal instrument for identifying the competent counterparts in foreign countries. Moldavian police officers are informed of the possibility of being able to cooperate with police of other countries through bilateral agreements and they enter into direct contact with police officers of other countries, whether a formal agreement exists or not.

Another channel for direct police cooperation is the liaison officer in the SECI Center; otherwise, Moldova does not send liaison officers to foreign countries. Moldova does not carry out international joint customs surveillance operations. There is however the possibility of carrying out joint investigations with foreign law enforcement authorities, especially with Romania, Belgium, Germany, Ireland, Italy, Switzerland and Israel. These operations are considered to have a high level of usefulness due to the fact that the police officers of two or several countries meet together and examine the cases they are interested in (crimes affecting two or more countries). The host country provides any assistance and any information available necessary for the investigation.

Practical possibilities for direct cooperation between Moldavian prosecutors/ police officers and their foreign counterparts are affected by the following factors:

- lack of computer equipment, such as computer networks (intranet) and official e-mail accounts;
- absence of readily available translators, who can translate the official documents coming from a foreign country in answer to an assistance request;

- low level of training in investigating transnational organised crime among Moldavian prosecutors, even if Moldavian police officers have a medium/high level of training.

2.6. INTERNATIONAL AND REGIONAL ORGANISATIONS

a) Legislation

Interpol is currently the only international organisation which effectively operates in Moldova for investigating transnational organised crime cases. The Moldavian Interpol Bureau exchanges: strategic and operational information, financial information on suspected corporate entities, information on investigative procedures and crime prevention methods. Furthermore, it provides: direct contacts with local law enforcement/prosecution offices, training initiatives, advice and support in individual investigations, participation in joint investigation teams in an operative and support capacity.

No cooperation has yet been achieved with any of the other regional organisations formed for cooperation purposes (Europol, Eurojust, and EJM), apart from SECI Center liaison officer.

b) Practices

As Interpol is the only international organisation operating in Moldova, it is also the only organisation, whose degree of cooperation could be assessed. In the experience of our experts, the frequency of use of Interpol records and its communication system is high. Additionally the following table illustrates the level of cooperation (where 0=no cooperation, 1=low level of cooperation, 2=medium level of cooperation and 3=high level of cooperation) in the different areas in which it operates. This evaluation is based on the personal judgement of the experts interviewed.

TABLE 10. DEGREE OF COOPERATION BETWEEN MOLDOVA AND INTERPOL

Exchange of strategic and operational information	2
Exchange of financial information on suspected corporate entities	3
Provision of direct contacts with local law enforcement authorities	3
Provision of direct contacts with local prosecution offices	2
Exchange of information on investigative procedures and crime prevention methods	2
Training initiatives	2
Advice and support in individual investigations	0
Exchange of liaison officers	1
Participation in joint investigative teams in a support capacity	2
Participation in joint investigative teams in an operative capacity	2

3. GOOD PRACTICES

3.1. STRUCTURES SET UP FOR INTERNATIONAL COOPERATION PURPOSES

The Ministry of Justice/ Prosecutor General's office and the Ministry of Interior/NCB Interpol are the centralised authorities through which public prosecutors/investigating judges and police officers have to channel their requests for international assistance. In the Ministry of Justice there also exists a Department uniquely devoted to international judicial cooperation.

The central above-mentioned authorities do not have translators readily available. Requests for assistance are sent only by mail and fax (not by email) and a national form to ask for international assistance does not exist.

The time necessary to get an answer to an assistance request made to a foreign State is very long: more than two months are normally required to get such an answer.

3.2. DATABASES ON ORGANISED CRIME

No common criminal databases have been established to share OC information collected in Moldova with foreign counterpart colleagues.

Furthermore, even if there is a national centralised database, which contains information about persons *convicted* for participating in OC groups, a foreign police officer cannot access the information contained in the database.

Information related to persons *wanted* for participating in organised criminal groups has not yet been collected in a national centralised database.

3.3. MODI OPERANDI/METHODS IN THE INTERNATIONAL COOPERATION PROCESS

Moldova has enacted the following *modi operandi*/methods in order to speed up the international cooperation process:

- acknowledgement of all requests and written enquiries concerning the execution of requests;
- providing the requesting authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing the request;
- setting priority to requests which have clearly been marked 'urgent` by the requesting authority;
- giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authority how the difficulty might be overcome;
- stating when the assistance requested is likely to be provided;
- explaining the reasons for the urgency or deadline;

- ensuring that requests are submitted in compliance with the relevant treaty or other international arrangements;
- providing the requested authorities with the name and contact details, including telephone and fax numbers, of the authority and, if possible, the person responsible for issuing the request;
- compliance with the formalities and procedures expressly indicated by the requesting member state;
- direct sending of procedural documents;
- use of fax and e-mail to send requests;
- spontaneous exchange of information;
- interagency coordination protocols.

4. EMERGING OBSTACLES

The analysis of legislation, practices and good practices relevant for international cooperation against organized crime has highlighted some shortcomings that are reported here for the sake of clarity, as they represent the background and rationale for the recommendations included in paragraph 5.

4.1. OBSTACLES IN LEGISLATION

1. The inadequacy of witness protection provisions during trial

Witness protection is provided for by Law n. 1458 (as amended by Law n. 126 on 3.5.2001), which establishes state protection for victims who act as witnesses. However, no specific measures, such as video links or other adequate means, are taken with a view to protecting the safety of witnesses during trials. This lack of protection measures may endanger the safety of the witnesses, and thus make them abstain from testifying.

2. The gaps in the confiscation regime

In the Moldavian confiscation regime the so-called 'reversal of the burden of proof' does not apply and the evidentiary burden the prosecutor has to discharge is high because it is equivalent to that necessary for the criminal conviction of a person. Furthermore, there is the necessity of having a court decision establishing that a criminal offence has been committed before confiscation can take place. It is therefore impossible to confiscate the proceeds of crime in the early stages of the proceedings, nor is it possible to have confiscation available in an independent proceeding, when the owner of the property is absent, dead or unidentified.

3. The scarcity of special means of investigations

In Moldova it is not currently possible for law enforcement agencies to intercept fax or Internet transmissions, nor may investigative units use storefronts.

4. The gaps in the data protection system

Moldova has not yet ratified the 1981 COE Convention and relative data protection provisions. Furthermore, it has not concluded bilateral agreements within the framework of police and judicial cooperation containing provisions to protect personal data. No agreement is in place with Europol regarding the reciprocal transmission of personal data. Finally, only organisational measures, and not technological security measures, are in place to protect personal data.

The absence of such legal instruments and measures for data protection obstructs police and judicial cooperation with the countries that have enacted a data protection regime and are party to the 1981 COE Convention. It also impairs the exchange of information with Europol.

5. The absence of bilateral instruments with neighbouring countries

Although Moldova has ratified many multilateral instruments for police and judicial cooperation, it did not conclude bilateral agreements for direct judicial cooperation with any of its neighbouring countries, nor did it sign police cooperation

agreements with Ukraine. The lack of bilateral instruments with all neighbouring countries might impair the cooperation process at a practical level, because through the deployment of solely multilateral instruments, it is not possible to reach the level of definition and detail achieved by bilateral agreements.

6) The lack of instruments to directly exchange data in the police cooperation process

Moldavian police officers are not obliged to forward information on TOC rings, nor do they have the legal possibility to directly send bank or phone records if requested to do so by a foreign counterpart. Additionally, there are no liaison officers posted by Moldova to foreign countries (apart from SECI Center liaison officers), who might expedite the cooperation process, and no international joint customs surveillance operations are put in place to share information and combine law enforcement efforts with neighbouring countries.

The absence of legal obligations and legal possibilities to share information, which may be of great importance for the development of organised crime investigations, and the absence of instruments enhancing direct police cooperation, such as joint investigative teams and liaison officers, might slow the cooperation process between Moldova and foreign countries.

7) The scarcity of instruments for the judicial cooperation process

Moldavian prosecutors are not obliged to execute confiscation orders even if requested to do so by a foreign counterpart. Moreover there are no liaison magistrates posted by Moldova to foreign countries, who could expedite the cooperation process.

The lack of these legal obligations to cooperate and the absence of instruments enhancing direct judicial cooperation, such as liaison magistrates, might slow the cooperation process between Moldova and foreign countries.

4.2. OBSTACLES IN PRACTICES

8) The inadequacy of technological means

Computer networks (intranets) and official e-mail accounts are not available to all Moldavian prosecutors/investigating judges and police officers. This lack of technological means slows down the process of cooperation and exchange of information.

9) The lack of readily available translators

Moldavian prosecutors do not have translators readily available for the documents coming from a foreign country in answer to a cooperation request. This causes delays in getting information on TOC.

10) The low level of training of prosecutors in investigating TOC cases

The level of training of Moldavian prosecutors in investigating TOC cases is rated as low. This lack of knowledge impedes the common use of channels of exchange of information and cooperation.

11) The lack of cooperation with Europol, Eurojust and EJN

The degree of cooperation with Europol, Eurojust and EJN is almost not existent. These regional organisations could enhance data exchange and cooperation among the European countries, but the lack of cooperation agreements or protocols impedes this form of cooperation.

4.3. OBSTACLES IN GOOD PRACTICES

12) The lengthiness of assistance procedures through central authorities and their low level of technological and human equipment

Central authorities managing requests for international cooperation do not have translators readily available, who can translate requests for cooperation into the language of the requested state. This combined with the fact that they do not use the email system nor national standard forms to ask for international assistance may explain why it takes so long to get an answer (more than two months).

13) The absence of common criminal databases and the inadequacies of national ones

No common criminal database on OC has yet been established in Moldova. In fact, even if there is a national centralised database, which contains information about persons convicted for participating in organised criminal groups, a foreign police officer cannot access the information contained in the database. As to information related to persons wanted for participating in organised criminal groups, they have not yet been collected in a national centralised database.

The absence of such instruments impedes a rapid exchange of information with foreign colleagues on people wanted/convicted for participating in OC groups.

4.4. OTHER OBSTACLES MENTIONED BY EXPERTS

14) Obstacles to investigating organised crime

The experts interviewed mentioned the following as the most significant obstacles to investigating organised criminal groups:

- inadequate follow up of investigative techniques;
- limited investigative powers;
- lack of a multidisciplinary approach, i.e. of cooperation between officers with different skills in the development of an investigation
- lack of material resources within the offices participating in organised crime investigations;
- high turnover of specialised personnel participating in organised crime investigations.

15) Obstacles to police assistance

The experts interviewed mentioned the following as the most significant obstacles to *police assistance* received by Moldova from other countries in pre-trial investigations into transnational organised crime:

- lack of harmonisation in legislation;
- language problems;
- lack of financial resources;
- lack of training.

16) Obstacles to judicial assistance

The experts interviewed mentioned the following as the most significant obstacles to *judicial assistance* received by Moldova from other countries in pre-trial investigations into transnational organised crime:

- lack of response to requests for assistance;
- delay of response to requests for assistance;
- lack of harmonisation in legislation;
- language problems;
- lack of financial resources;
- lack of training.

5. RECOMMENDATIONS

5.1. RECOMMENDATIONS ON LEGISLATION

Recommendation n. 1

'Enacting witness protection provisions'

Background and rationale

Witness protection is provided for by Law n. 1458 (as amended by Law n. 126 on 3.5.2001), which establishes state protection for the victims who act as witnesses. However, no specific measures, such as video links or other adequate means, are taken with a view to protecting the safety of witnesses during trials. This lack of protection measures may endanger the safety of the witnesses, and thus make them abstain from testifying.

Recommendation

Action should be taken to enact specific witness protection provisions.

Implementing measures

- Moldova should include in its witness protection legislation specific provisions on video links and other adequate means to protect the safety of the witness during trials;
- The existing cooperation with the SECI Center should be further enhanced to protect witnesses of trafficking.

Recommendation n. 2

'Improving the confiscation regime'

Background and rationale

In the Moldavian confiscation regime the so-called 'reversal of the burden of proof' does not apply and the evidentiary burden the prosecutor has to discharge is high because it is equivalent to that necessary for the criminal conviction of a person. Furthermore, there is the necessity of having a court decision establishing that a criminal offence has been committed before confiscation can be carried out. It is thus impossible to confiscate the proceeds of crime in the early stages of the proceedings, nor it is possible to have confiscation available in an independent proceeding, when the owner of the property is absent, dead or unidentified.

Recommendation

Action should be taken to improve the confiscation regime to make it more consistent with European and international standards.

Implementing measures

Moldavian authorities should enact appropriate legislation, lowering the evidentiary burden to be discharged by the prosecutor and making forfeiture available also in an independent proceeding.

Recommendation n. 3

'Empowering law enforcement agencies with special means of investigation'

Background and rationale

In Moldova it is not currently possible for law enforcement agencies to use interceptions of fax and Internet transmissions, nor storefronts by investigative units.

Recommendation

Action should be taken to empower law enforcement agencies with all special means of investigation.

Implementing measures

Pieces of legislation empowering law enforcement with efficacious means of investigation, such as interceptions of fax and Internet transmissions and the use of storefronts by investigative units should be put in place.

Recommendation n. 4

'Enacting data protection rules and concluding agreements on data exchange'

Background and rationale

Moldova has not yet ratified the 1981 COE Convention and relative data protection provisions. Furthermore, it has not concluded bilateral agreements within the framework of police and judicial cooperation containing provisions to protect personal data. No agreement is in place with Europol regarding the reciprocal transmission of personal data. Finally, only organisational measures, and not technological security measures, are in place to protect personal data.

The absence of such legal instruments and measures for data protection obstructs police and judicial cooperation with the countries that have enacted a data protection regime and are party to the 1981 COE Convention. It also impairs the exchange of information with Europol.

Recommendation

Action should be taken to enact data protection measures and conclude agreements on data exchange with Europol and neighbouring countries.

Implementing measures

- The Moldavian Parliament should enact the draft Law on Data Protection (creating amongst other things a specialised national authority) as soon as possible.
- The 1981 COE Convention should be ratified.
- The Moldavian government should conclude agreements on data protection with Europol and neighbouring countries within the framework of police and judicial cooperation.

Recommendation n. 5

'Concluding agreements on police and judicial cooperation with all neighbours'

Background and rationale

Although Moldova has ratified many multilateral instruments for police and judicial cooperation, it did not conclude bilateral agreements for direct judicial cooperation with any of its neighbouring countries, nor did it sign police cooperation agreements with Ukraine. The lack of bilateral instruments with all neighbouring countries might impair the cooperation process at a practical level, because through the deployment of solely multilateral instruments, it is not possible to reach the level of definition and detail achieved by bilateral agreements.

Recommendation

Action should be taken to conclude bilateral agreements on police and judicial cooperation with all neighbouring countries.

Implementing measures

The Moldavian government should reach a consensus on the conclusion of bilateral agreements on police and judicial cooperation with all neighbouring countries and in particular:

- with Romania and Ukraine for judicial cooperation, and
- with Ukraine for police cooperation.

Recommendation n. 6

'Enhancing the channels of direct police cooperation'

Background and rationale

Moldavian police officers are not obliged to forward information on TOC rings, nor do they have the legal possibility to directly send bank or phone records if requested to do so by a foreign counterpart. Additionally, there are no liaison officers posted by Moldova to foreign countries (apart from SECI Center liaison officers), who might expedite the cooperation process, and no international joint customs surveillance operations are put in place to share information and combine law enforcement efforts with neighbouring countries.

The absence of legal obligations and legal possibilities to share information, which may be of great importance for the development of organised crime investigations, and the absence of instruments enhancing direct police cooperation, such as joint investigative teams and liaison officers, might slow the cooperation process between Moldavia and foreign countries.

Recommendation

Action should be taken to enhance direct channels of cooperation for Macedonian police officers.

Implementing measures

- The exchange of information should be promoted by making it a legal obligation to forward information on TOC rings and the relative channels for communication should be created.
- Direct police cooperation should be promoted by giving the legal possibility to police officers to directly send bank and phone records if requested by a foreign counterpart.
- Moldova should also station liaison officers abroad, especially in the countries where most of the requests for assistance are addressed.
- Finally, international joint customs surveillance operations should be put in place.

Recommendation n. 7**'Enhancing the channels of direct judicial cooperation'***Background and rationale*

Moldavian prosecutors are not obliged to execute confiscation orders even if requested to do so by a foreign counterpart. Moreover there are no liaison magistrates stationed by Moldova in foreign countries, who might expedite the cooperation process.

The lack of these legal obligations to cooperate and the absence of instruments enhancing direct judicial cooperation, such as liaison magistrates, might slow the cooperation process between Moldavia and foreign countries.

Recommendation

Action should be taken to enhance direct channels of cooperation for Moldavian prosecutors/investigating judges.

Implementing measures

Direct judicial cooperation should be promoted by giving the legal and material possibility to prosecutors/investigating judges to adopt the measures of cooperation mentioned above. Possible implementing measures are:

- improve the legal framework for direct judicial cooperation making possible the measures of direct cooperation mentioned above;
- station liaison magistrates abroad, especially in the countries where most of the requests for assistance are addressed, in order to expedite the process of cooperation.

5.2. RECOMMENDATIONS ON PRACTICES

Recommendation n. 8**'Improving technological equipment available to police officers/prosecutors'***Background and rationale*

Computer networks (intranets) and official e-mail accounts are not available to all Moldavian prosecutors/investigating judges and police officers. This lack of technological means slows down the process of cooperation and exchange of information.

Recommendation

Action should be taken to improve the technological equipment available to police officers and prosecutors/investigating judges investigating TOC cases.

Implementing measures

All prosecutors/judges and police officers investigating TOC cases should be provided with a computer network and an official e-mail account by their agency.

Recommendation n. 9

'Providing prosecutors investigating TOC cases with readily available translators'

Background and rationale

Moldavian prosecutors do not have translators readily available for the documents coming from a foreign country in answer to a cooperation request. This impairs the receipt of information on TOC.

Recommendation

Action should be taken to provide readily available translators for prosecutors/ judges investigating TOC cases.

Implementing measures

A 'translation service' could be established to provide fast and secure translation of documents coming from a foreign country in answer to a cooperation request.

Recommendation n. 10

'Improving the level of training of prosecutors and police officers'

Background and rationale

The level of training of Moldavian prosecutors in investigating TOC cases is rated low. This lack of knowledge impedes the common use of channels for the exchange of information and cooperation.

Recommendation

Action should be taken to provide training in investigating TOC.

Implementing measures

Training courses and seminars should be organised on the most relevant forms of TOC.

Recommendation n. 11**'Promoting cooperation with international and regional organisations'***Background and rationale*

The degree of cooperation with Europol, Eurojust and EJN is almost not existent. These regional organisations could enhance data exchange and cooperation among European countries, but the lack of cooperation agreements or protocols impedes this form of cooperation.

Recommendation

Action should be taken to promote cooperation with international and regional organisations.

Implementing measures

- Cooperation protocols and contacts with Europol/Eurojust/EJN should be made operational;
- Training courses and seminars should be organised for middle level officers to enhance knowledge of the possibilities of cooperation with relevant international and regional organisations.

5.3. RECOMMENDATIONS ON GOOD PRACTICES

Recommendation n. 12**'Improving cooperation capacities of structures set up for international cooperation purposes'***Background and rationale*

Central authorities managing requests of international cooperation do not have translators readily available, who can translate requests for cooperation into the language of the requested state. This combined with the fact that they do not use the email system nor national standard forms to ask for international assistance may explain why it takes so long to get an answer (more than two months).

Recommendation

Action should be taken to guarantee an efficient translation service at the central authorities dealing with international cooperation in criminal matters, to improve the means adopted to send the requests for cooperation and to standardise the forms for requesting assistance.

Implementing measures

- a dedicated translation service should be put in place at the central authorities dealing with international cooperation in criminal matters in order to cope with assistance requests in the fastest way possible;
- an email system should be set up in order to expedite the process of sending/receiving assistance requests;
- unified national forms should be used in assistance requests in accordance with foreign countries so that the basic elements would be always present and the risk of delays and rejection minimised.

Recommendation n. 13

'Establishing common and national criminal databases'

Background and rationale

No *common* criminal database has yet been established in Moldova on OC. In fact, even if there is a national centralised database, which contains information about persons convicted for participating in organised criminal groups, a foreign police officer cannot access the information contained in the database. Information related to persons wanted for participating in organised criminal groups, has not yet been collected in a national centralised database.

The absence of such instruments impedes a rapid exchange of information with foreign colleagues on people wanted/convicted for participating in OC groups.

Recommendation

Action should be taken to establish common national criminal databases.

Implementing measures

- the existing national centralised database, which contains information about persons convicted for participating in organised criminal groups, should be made accessible to foreign police officers and prosecutors;
- a national centralised database, which contains information about persons wanted for participating in organised criminal groups, should be established and made accessible by foreign police officers and prosecutors.

8.7.

POLAND³⁷⁷

INTRODUCTION

The Republic of Poland is one of the largest countries in Central Europe. It borders with Belarus (also named Byelorussia), the Czech Republic, Germany, Lithuania, Russia, Slovakia and Ukraine. Its northern frontier on the Baltic Sea gives it easy access to Scandinavian and northern seaports.

Poland is a constitutional republic, which acceded to the European Union on 1 May 2004. It joined the UN on 24 October 1945 and the Council of Europe on 26 November 1991.³⁷⁸

The Polish Constitution was adopted on 16 October 1997, and the criminal law code entered into force on 01.01.1998. Several legal reforms to the norms against organised crime activities entered into force, among which new provisions against corruption (i.e. immunity for the bribe giver if s/he cooperates with criminal justice), and the reversal of *onus probandi* in confiscation/forfeiture).³⁷⁹ The criminal procedure code (Act of 6 June 1997) is an example of a mixed system with majority of elements belonging to the continental tradition, e.g. the proceedings are mainly written, and there is no possibility of cross examination of the witnesses.³⁸⁰

As to specialised law enforcement structures, there is a special investigative unit, called the 'Central Investigation Bureau', charged with the task of carrying out investigations into organised crime or into criminal activities typically related to

³⁷⁷ The Polish country profile was based, among other materials, on the answers given by the following experts: Mr. Jerzy Szymanski, Prosecutor, Organised Crime Bureau, Warsaw; Mrs. Elzbieta Wrobel Wolinska, Expert, National Police, Warsaw. They answered to two questionnaires: one in autumn 2002 and one in summer 2003. The final revision and updating was carried out by both the experts in May 2004.

³⁷⁸ Detailed information on the main Polish democratic institutions and its judiciary is available at: <http://www.legislationline.org> (last verified on 18 February 2004). See also Central Intelligence Agency (CIA), *The World Factbook 2003*, available at <http://www.cia.gov/cia/publications/factbook/index.html> (last verified on 18 February 2004).

³⁷⁹ One important reform, which has recently been approved, regards the provisions related to corporate liability. Polish Parliament enacted the principles regulating this subject with the Law of Collective Entities for Acts Prohibited under Penalty (entered into force since 1st November 2003).

³⁸⁰ The experts interviewed reported some obstacles due to the differences between the Polish criminal procedure and common law systems. The differences between the two legal systems: continental and common-law represent one of the main obstacles in the field of judicial international cooperation. An example is the cooperation with the UK. UK authorities demand much more information than other partners, even concrete evidence (e.g. the protocol of witness testimony) to be attached to a request for extradition. In relation to the US and the UK, Polish authorities receive Police reports instead of judicial decisions which are accepted by Polish criminal procedure. Sometimes there is no information on the validation of decisions. There is also a problem with those countries where judicial decisions do not usually contain any written justification. Thus some of them cannot be understood by the requested party. There is also a problem with different times of limitation between e.g. Poland and France. According to the judgement of the experts, more mutual credibility and simplified procedures, are required.

organised crime. This authority is located at the Headquarters of Polish Police, which is subordinated to the Ministry of Interior.

1. THE ORGANISED CRIME SITUATION

1.1 FEATURES OF THE ORGANISED CRIMINAL GROUPS

Crime and organised crime in particular, is considered to be of great concern in Poland, and over recent years many cases of the use of violence by organised criminal groups have been recorded. During 1999 there were signs of an increasing number of shootings and bombings as a means of settling disputes in the rivalry between groups wishing to control particular territories or to monopolise illegal markets. Since then the number of bombings has constantly decreased and in 2003 the number of explosions for criminal purposes was 15% less than the previous year, the number of bomb attacks during a single year decreased by over 112% (2002– 34 cases, 2003 – 16).³⁸¹

Organised criminal groups operating in Poland are structured mostly in a hierarchical³⁸² manner and on a project basis. Most criminal groups have only been recently formed and will pass through various phases of restructuring. The current restructuring of some of the Polish criminal groups involved in drug trafficking³⁸³ makes it difficult to describe them in any detail.³⁸⁴

³⁸¹ The data on the decrease in the number of explosions for criminal purposes was provided by the police expert.

³⁸² 'In Poland the structure of organised crime groups is mainly a hierarchical with two or three levels. Every group has a single leader and a few other members belonging to some sort of collective leadership. Other members, so-called soldiers, are usually not full-time members. They are hired to do a particular job and for particular purposes. Thus, the group is usually not stable beyond the leadership level but changes constantly in the face of current needs and opportunities. Groups with more complicated structures, for example cell-based, are not very common. Such structures are sometimes found in groups engaged in theft, the legalising and smuggling of motor vehicles and in the production, smuggling and trafficking of drugs', European Committee on Crime Problems (CDCP), Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime, *Report on the Organised Crime Situation in Council of Europe Member States, Council of Europe, Strasbourg, December 2000*, p. 7, available at: http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/Organised_crime/Documents/Report1999E-2.pdf (last verified on 27 April 2004).

³⁸³ 'The production of drugs, especially of amphetamines and the smuggling of them out of Poland or through its territory has usually been subject to control by organised Polish and international criminal groups since 1989. Many of these currently active Polish criminal groups have their roots and origins in communist period. At that time their members were involved first of all in illegal currency trade, various forms of trade on the black market or the smuggling of goods from abroad. After 1990 these people and groups started to constitute a 'hard core' of the Polish Organised underworld', K. Krajewski, Adjunct Professor of Criminology at the Jagiellonian University of Cracow, Poland, 'Drug Trafficking in Poland', in P.C. Van Duyne, V. Ruggiero, M. Scheinost, W. Valkenburg, *Cross Border Crime in a Changing Europe*, 2001, Nove Science Publisher, Ics., Huntington, New York, p. 85.

³⁸⁴ 'Annual Report. Part Three: Europe', in *Crime, Law and Social Change*, Kluwer Academic publisher, April 2001, vol. 36, Issue 1 – 2, p. 103 – 165, available at: <http://www.kluweronline.com/issn/0925-4994/current> (last verified on 27 April 2004).

The number of organised criminal groups operating in Poland is estimated at more than 50, with an average of about 10 to 20 members for each group.³⁸⁵

The groups are mainly formed by nationals, but non-national elements are also present.³⁸⁶ Often Polish organised crime groups have contacts and need to cooperate with foreign groups operating in their country.³⁸⁷ For example criminal groups engaged in the production and trafficking of drugs,³⁸⁸ car theft and smuggling, the smuggling of consumer goods, or the transfer of people across borders, have members of various nationalities and the scope of their activity is international.

As regards the foreign criminal groups operating in Poland, there is significant interest of some criminal groups in the commission of crimes in specific vulnerable areas of economy (money laundering in the financial system, stock markets, real estate markets, casinos, tourism etc.). It is also clear that Polish organised criminal groups are in some way trying to defend their turf from foreign invaders, who find it far from easy to operate in Poland.³⁸⁹ This is the case of Colombian traffickers. Polish gangs involved in the cocaine trade are linked to criminal organisations operating out of Cali but they are endeavouring to restrict the Colombian presence in Poland by trying to establish Poles who are permanent residents in Colombia as their middle-men. The most active foreign traders in heroin are Turkish criminal groups and gangs of Kosovar Albanians.³⁹⁰

³⁸⁵ 'In Warsaw alone there are over 100 gangs, many of which are armed'. P. Sienko, R. Pasztelanski, 'Polish Daily reports on Seizure of Guns, Views Availability of Firearms to Gangs', in *Warsaw Życie Warszawy*, January 2002, available at: http://www.nisat.org/blackmarket/europe/East_Europe/poland/2002.01.05-Illegal%20Firearms%20in%20Polish%20Crimes.html (last verified on 27 April 2004).

³⁸⁶ Mostly Ukrainians, Lithuanians, Russians and other foreigners from former SU, but also Turks, Germans, Vietnamese and Albanians, whose number has grown over recent years.

³⁸⁷ According to the experts' situational report of 30 June 2002, the origins of foreigners (100%) under police supervision for cooperation within organised groups in Poland are: Ukraine 14,5%; Byelorussia 13,5%; Germany 8,6%; Turkey 5,5%; Lithuania 4,5%; Russia 6,2%; Vietnam 2,8%; Albania 1,4%; other countries 43% Czech criminals also seem to be present in the country.

³⁸⁸ 'Usually a more elaborate structure have groups involved in producing drugs. Here a clear-cut division of labour is the rule. Members involved in supplying chemicals, the actual production of drugs and their distribution usually, for security reasons, do not know each other, which makes the destruction of entire organisations particularly difficult. The smuggling of drugs also requires the preparation of many separate stages of the entire operation, which sometimes takes place in many countries. Because of this, international connections with criminal groups in other countries are necessary. It seems that such structures in Poland are very often connected to people that have some kind of contract with traditional producing countries in South America or in Asia. This role may be played by foreigners living in Poland, or by Poles who have contracts abroad, as a result of marriage, studies, business connections, tourist travel etc. It is also well known that groups active in Poland, especially those producing amphetamine, use Polish nationals living permanently abroad as distributors. The latter situation is especially often the case in Sweden', in K. Krajewski, cit., p. 87.

³⁸⁹ Ibidem.

³⁹⁰ 'While the former seem to have struck a bargain with Polish organised crime, the latter are mostly active in the Zakopane tourist resort or in the pubs of Bielsko Biala, both in southern Poland'. In: 'Annual Report. Part Three: Europe' in *Crime, Law and Social Change*, Kluwer Academic publisher, April 2001, vol. 36, Issue 1 – 2, available at: <http://www.kluweronline.com/issn/0925-4994/current>, (last verified on 27 April 2004), p. 103 – 165.

With regards Polish criminal groups operating in other countries, in 1998 in Denmark police started various investigations against organised criminal group offences against property, such as liquor and drug smuggling, committed in cooperation with UK, German and Danish criminals. According to the latest Europol report, the presence of Polish organised criminal groups is also particularly significant in Germany for geographic reasons.³⁹¹ In Germany Polish criminal groups are primarily active in the illegal market segments of drug trafficking, smuggling, property crime, forgery and crime associated with nightlife. Most of the investigations carried out in 1998 established that criminal activity tended to occur in certain combinations. For example drug crime was frequently linked to crimes associated with nightlife and also prostitution and illegal games. Violent crimes were also often committed in connection with this type of criminal activity. Offences in the fields of vehicle crime and illegal immigration were frequently associated with forgery.³⁹² In France the theft of works of art and the handling of stolen goods occur via structured channels and in 1998 many organised gangs from Romania, the Czech Republic, Poland and Hungary were uncovered who specialised in burgling castles and mansions.³⁹³

1.2. ACTIVITIES OF THE ORGANISED CRIMINAL GROUPS

According to the Polish authorities, the trade in illicit drugs is one of the dominant areas in which organised criminal groups operate, but they are not specialised in just one kind of criminal activity.³⁹⁴ The main fields of activity for TOC in Poland are currently: TAX fraud, smuggling and economic crimes linked to drug crimes. The number of violent crime seems to be decreasing.

Given that organised criminal activities change very quickly according to existing opportunities in the criminal market, Polish organised crime seems to have been also involved in other activities, such as printing and distributing counterfeit money, smuggling of cigarettes and alcohol, production and sale of pirate audio CDs³⁹⁵ and software; cyber-attacks;³⁹⁶ illegal activities surrounding prostitution, fiscal frauds including false reclaiming of VAT, illegal transactions on stock

³⁹¹ 'In Germany, Polish organised criminal groups now represent the second largest non-German organised group after Turkish organised criminal groups. These groups are involved in vehicle crime and customs and revenue offences in relation to commodity smuggling. See Europol, 2003 *European Union Organised Crime Report*, Luxembourg, 2003, available on the Europol site at: <http://www.europol.eu.int/publications/EUOrganisedCrimeSitRep/2003/EUOrganisedCrimeSitRep2003.pdf> (last verified on 27 April 2004).

³⁹² EUROPOL, *1998 EU Organised Crime Situation Report*, The Hague, 3 February 2000, p. 47.

³⁹³ *Ibidem*, p. 42.

³⁹⁴ European Committee on Crime Problems (CDCP), Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime, *Report on the Organised Crime Situation in Council of Europe Member States*, Council of Europe, Strasbourg, December 2000, p. 7, available at: http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/Organised_crime/Documents/Report1999E-2.pdf (last verified on 27 April 2004).

³⁹⁵ 'In Poland CD piracy is the most common serious offence', *ibidem*. See also BPCC (British Polish Chamber of Commerce), 'Ganging Up Against Pirates', in *Safe Business*, available at: <http://www.bpcc.org.pl/en,0,1132.html> (last verified on 27 April 2004).

³⁹⁶ Computer Crime Research Centre, *Cybercrime Impact World Economics*, 9 July 2003, available at: <http://www.crime-research.org/news/2003/07/Mess0903.html> (last verified on 27 April 2004).

markets, trafficking of weapons, smuggling of cultural artefacts, usury, intellectual property infringements, computer crimes and gambling.

Poland is traditionally a transit country for **drug trafficking**, but it is also gaining importance in the production of amphetamines. There is also a growing internal market for opiates.³⁹⁷ Other drugs, like cocaine, seem to play a marginal role.³⁹⁸

Poland's synthetic drugs industry – above all amphetamines – is a very sophisticated indigenous narcotics enterprise. Amphetamines are mainly manufactured in mobile laboratories, which frequently change location in order to avoid detection. Nevertheless in recent years dozens of laboratories have been discovered and destroyed by the police.³⁹⁹ Poland is also the only country outside the European Union where large numbers of LSD-doses were seized.⁴⁰⁰ Amphetamines produced or transited through Poland are exported to Western Europe, while the other synthetic drugs (mainly ecstasy) are imported from Western Europe to Poland.⁴⁰¹

Poland is an important transit country for smuggling the other types of drugs to Western Europe.⁴⁰² The role of Polish organised criminal groups acting as producers or intermediaries in international smuggling is of great importance.⁴⁰³ The main drug being smuggled through Poland seems to be heroin transported on the land route from South West Asia through Turkey and Iran or by the Silk route through Caucasus and Ukraine.⁴⁰⁴

³⁹⁷ 'Polish criminals have made the country the fourth-largest European producer of illegal amphetamines after the Netherlands, Great Britain and Belgium', U.S. Department of State, *International Narcotics Control Strategy 2003*, March 2004, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2003> (last verified on 27 April 2004). See also European Committee on Crime Problems, cit.: '*in Europe the most important producing countries of synthetic drugs are the Netherlands and Poland*'.

³⁹⁸ 'Over the last few years Poland seems to be used increasingly as a transit route for smuggling cocaine, again mainly to Germany. Two possible routes are used: either by sea to the ports on the Baltic coast, or by air to the international airport in Warsaw. At the airport individual couriers swallowing packages with drugs and larger transports using air-cargo are used when cocaine is involved. Such activities seem to be controlled by the Cali Cartel', in K. Krajewski, cit., p. 83.

³⁹⁹ According to Polish authorities 12 illegal laboratories were destroyed by the police in 2001, 15 in 2002 and 9 in 2003.

⁴⁰⁰ Ibidem.

⁴⁰¹ 'In particular to Sweden and Germany', ibidem. See also EUROPOL, cit., p. 35: 'but also Russia has reported that synthetic drugs are brought into it from Germany, The Netherlands and Poland through western and north-western regions of its territory'.

⁴⁰² Poland is used as a transit country for heroin and for marijuana and hashish. Marijuana and hashish are transported from North Africa (on the so-called 'African route') by sea to Polish ports and then overland to Germany.

⁴⁰³ Central Intelligence Agency (CIA), *The 2002 World Fact Book*, 2002, available at the CIA website: <http://www.cia.gov/cia/publications/factbook/print/ez.html> (last verified on 27 April 2004).

⁴⁰⁴ 'Smuggling of heroin from Turkey takes place very often under the cover of legal activities conducted by legal firms engaged in textile importation and exportation that are usually owned jointly by Poles and Turks. In such cases drugs are hidden in trucks, sometimes without the knowledge of the drivers. Tourist buses are Also used for this purpose. Another method employed by Turkish groups uses the Polish-Slovak border. Drugs are smuggled by car to Slovakia, repackaged and then carried by individual couriers who cross the border illegally, usually through the mountains', in K. Krajewski, cit., p. 82 – 86.

Poland has the double status as a place of origin for **illegal immigration/trafficking in human beings**, and as a major transit and destination country for these types of crimes. In Poland the threat posed by illegal immigration in organised forms, mainly from the Asian countries and the states established after the collapse of the USSR, existed until 2002⁴⁰⁵. Since then, Poland has become an EU Eastern frontier and, accordingly, it has changed its visa regulations and border checks.

Women from Russia, Ukraine, Belarus, Lithuania, Romania and Bulgaria are trafficked mainly for prostitution purposes to Germany, the Netherlands, Belgium and Switzerland.⁴⁰⁶ The number of Polish victims have decreased over the last few years, but the business of prostitution in Poland is flourishing with an estimated number of 30,000–35,000 prostitutes, mostly Ukrainian and Bulgarian, active in the country as a result of sex tourism from Germany to Western Poland.⁴⁰⁷ The other sore point is the Eastern and North-eastern Polish frontier with Russia, Lithuania, Belarus and Ukraine, which is to become the eastern frontier of the European Union.⁴⁰⁸ In 2000 the first ever criminal proceedings took place in Poland against persons accused of illegally organising another person's crossing of the frontiers of the Republic of Poland. Both Polish and foreign nationals were convicted as being members of the criminal groups that organised the smuggling of migrants.⁴⁰⁹

Drug and human trafficking do not constitute an exclusive area of activity for organised criminal groups operating in Poland. The country is also used as a **smuggling** route for a variety of other goods, like alcohol, cigarettes, electronic equipment and small arms like pistols and carbines.⁴¹⁰ Most of these goods are destined for the Polish market, however they are also smuggled from Western Europe to other countries such as Belarus, Ukraine, the Baltic republics and the Russian Federation and from these countries to Europe.

Poland serves as a major transit route for smuggling **stolen cars** from Western Europe to the region of the former Soviet Union.⁴¹¹ The country is also seeing the

⁴⁰⁵ M. Adamczyk, 'Current cooperation of the Border Guard of the Republic of Poland with the Federal Border Guard of the Federal Republic of Germany', paper presented at the conference *Extending the Area of Freedom, Justice and Security through Enlargement: Challenges for the European Union*, Trier, 4–6 July 2002.

⁴⁰⁶ In 2003 the annual total of the trafficking victims was 15,000. HEUNI, Lehti M, *Trafficking in women and Children in Europe*, Paper n. 18, Helsinki 2003, p. 23–24, available at: <http://www.heuni.fi/uploads/to30c6cjxyah11.pdf> (last verified on 27 April 2004). See also U.S. Department of state, *Trafficking in Persons Report*, June 2003, available at: <http://www.state.gov/g/tip/rls/tiprpt/2003/21275.htm> (last verified on 27 April 2004).

⁴⁰⁷ UNODC, *The Case of Poland*, 16 March 2004, available at: http://www.unodc.org/unodc/en/trafficking_projects_poland.html (last verified on 27 April 2004).

⁴⁰⁸ I. Rzeplinska, 'Trafficking in human beings', in Brice De Ruyver, Gert Vermeulen, Tom Vander Beken (Eds.), *Strategies of the EU and the US in Combating Transnational Organized Crime*, Institute for International Research on Criminal Policy (IRCP), Ghent University, Maklu, 2002, p. 396.

⁴⁰⁹ I. Rzeplinska, cit., p. 397.

⁴¹⁰ SAFER-Net, *Poland*, 7 March 2003, available at: http://www.research.ryerson.ca/SAFER-Net/regions/Europe/Pol_MH03.html (last verified on 27 April 2004). See also P. Sienko, R.Pasztelanski, cit.

⁴¹¹ 'Poland and the Czech Republic are crossroads for smuggling directed at West European markets and extensive traffic in stolen vehicles being moved from Western Europe to the East', in US Government, *International Narcotics Control Strategy 2002*, cit., p. 64.

emergence of trafficking in spare parts stripped from stolen vehicles and this trade owes its existence to the demand created in certain countries by the recent increase in used vehicles. According to Polish authorities, the most active groups in this criminal activity are Lithuanian and other Russian-language groups, which sometimes cooperate with Poles in Denmark, and most stolen cars transit through Poland to the East. Stolen vehicles also reportedly contribute to drug trafficking, where they are used as a means of payment.⁴¹² Polish organised criminal groups involved in stolen vehicles are well organised, particularly when it concerns the international trafficking of stolen vehicles and have sophisticated structures that specialise in the production of forged vehicle and identity documentation. In this activity they cooperate with German and Russian organised groups.⁴¹³

All the above described criminal activities (from drug trafficking to trafficking in persons, etc.) are estimated to generate a huge amount of proceeds that are estimated to amount to \$ 2–3 billion yearly according to Polish government data.⁴¹⁴ Polish banks serve as transit points for the transfer of criminal proceeds and the banking sector is considered vulnerable to **money laundering** at the placement stage.⁴¹⁵ Equally at the layering stage illicit proceeds are thought to be invested in property and or on the stock market.⁴¹⁶ The most used methods in money laundering operations are reported to be cash, wire transfers, credit cards, bank drafts, gold and other precious metals, cheques and money orders. Polish insurance companies and casinos are also reported to be venues for money laundering.

Other types of **economic crimes**, especially asset misappropriation, are also perceived to be a serious problem. Among the economic crimes, VAT frauds are considered by the Polish Government as the most dangerous.⁴¹⁷ In a recent survey, 46% of the companies interviewed denounced economic crime episodes in the last two years.⁴¹⁸ **Corruption** is also considered to be systemic especially among public officials, even if steps were recently taken to combat this phenomenon at the political and administrative level.⁴¹⁹

The sectors of the legitimate economy that seem to be at greatest risk of **infiltration** by the organised criminal groups operating in Poland are: the real estate sector, the construction sector, the financial sector, the tourism sector; the procurements

⁴¹² European Committee on Crime Problems, cit.

⁴¹³ M. Mazur, *Organised Crime*, available at: <http://www.cidavirtual.pt/asjp/medel/mariusz.html> (last verified on 27 April 2004).

⁴¹⁴ U.S. Department of State, *International Narcotics Control Strategy 2003*, cit.

⁴¹⁵ See also BPCC (British Polish Chamber of Commerce), 'Organised Crime and Money Laundering', in *Safe Business*, available at: <http://www.bpcc.org.pl/glowna.php?lng=en&id=994> (last verified on 27 April 2004).

⁴¹⁶ US Department of State, *International Narcotics Control Strategy 2002*, cit.

⁴¹⁷ Bojarski J., 'The Underground Economy in Poland and its Control', in *Journal of Financial Crime*, vol. 11, n. 3, 2004.

⁴¹⁸ PricewaterhouseCoopers, *Economic Crime Survey – Poland*, BPCC., 2003, available at: <http://www.bpcc.org.pl/glowna.php?lng=en&kat=405> (last verified on 27 April 2004).

⁴¹⁹ Commission of the European Communities, *Comprehensive Monitoring Report on Poland's Preparations for Membership*, 2003, available at: http://europa.eu.int/comm/enlargement/report_2003/pdf/cmr_pl_final.pdf (last verified on 27 April 2004).

sector; casinos, nightlife services and the legal professions. According to the opinion of the police sources organised criminal groups' investments take place first of all in restaurants, nightclubs, hotels and recreational complexes.⁴²⁰

2. LEGISLATION AND PRACTICES

2.1. CRIMINAL LAW

Poland has recently signed and ratified most of the relevant international and European specific instruments against organised crime: the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (ratified on 26.05.1994), the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ratification on 01.04.2001), the 1999 Council of Europe Criminal Law Convention on Corruption (ratified on 01.04.2003), the United Nations Convention against Transnational Organised Crime and its Protocols (ratified on 12.11.2001).

Accordingly, the Polish criminal code criminalizes all the main forms of organized criminal activities. The Polish Parliament has also enacted the Law of Collective Entities for Acts Prohibited under Penalty, which entered into force on 1 November 2003. This Act improves the instruments available for the fight against organized crime by setting forth the principles for the liability of collective entities and the procedures to be followed in those cases.

Despite recent improvements there is still a partial lack of correspondence of existing literal provisions to international standards. To begin with, in the Polish criminal law there is no specific legal definition of trafficking in human beings.⁴²¹ Poland however recognizes the definition of human trafficking contained in the UN Convention against transnational organized crime and Additional Protocol to Prevent Suppress and Punish Trafficking in Persons especially Women and Children, which it ratified in 2001.

Money laundering is criminalized by art. 299 CC.⁴²². This provision, which contains elements taken from the 1991 EC Directive, was first reviewed by the Council of

⁴²⁰ K. Krajewski, cit., p. 88.

⁴²¹ There are only the provisions linked to slavery included in art. 253 CC: (1) Whoever conducts white [sic!] slavery (trade in humans) even with their consent shall be subject to the penalty of deprivation of liberty for a minimum term of 3 years. (2) Whoever, in order to gain material benefits, organises the adoption of children in violation of the law, shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

⁴²² Art. 299: (amended by State Gazette No.95 of 1975, amended and complemented by No. 28 of 1982, No.89 of 1986, rescinded, No.10 of 1993, new, No.50 of 1995, former text of Art.250, No.21 of 2000): (1) Whoever remits sums abroad by way of a banking operation using a forged, falsified documents or a documents with untrue content shall be punishable by deprivation of freedom for one to ten years and by a fine up to an amount double the sum of the remittance. (2) (New – State Gazette No. 21 of 2000) The punishment shall be deprivation of freedom for five to fifteen years and a fine up to an amount double the sum of the remittance made, if the perpetrator was aware or supposed that the sums have been acquired through illicit traffic of narcotics and/or of their analogues, and/or of their precursors.

Art.253 (amended by State Gazette No.28 of 1982, rescinded by No. 10 of 1993, new, No. 62 of 1997): (1) (amended by State Gazette No. 85 of 1998). Whoever performs financial operations or other deals with

Europe examiners in 1999 and 2002, who found them to be an important step forward in the fight against this crime, but raised concerns about the completeness of the list of conducts enumerated ('list approach').⁴²³

Furthermore, this provision was structured in a manner which caused difficulties in its application. In particular, the wording of art. 299 of the Penal Code (which existed until June 2001) made it impossible to prosecute offenders for 'self money laundering'.

With the *Law on Countering Introduction into Financial Circulation of Property Values Derived from Illegal or Undisclosed Sources*, entered into force on 16th November 2000 (Journal of Laws of 2000, No 116, item 1216), Poland attempted to introduce some order into the so far ineffective system of counteracting the most difficult to prosecute crimes, i.e. legalization of revenue derived from criminal activities. Pursuant to art. 43 of the afore-mentioned Act, the new Art. 299 of the Penal Code received the following wording: 'Whoever accepts, transfers or exports abroad, tenders, securities or other foreign exchange values, property rights or movables or real property derived from benefits related to the commission of a forbidden act, assists the transfer of the title thereof or holding thereof, or undertakes other actions that may prevent or materially impede the stating (establishing) of their criminal origin or place of deposit, their disclosure, seizing or forfeiting thereof, shall be subject to a penalty of deprivation of liberty of from six months to 8 years.'

The new definition of the money laundering offence introduces penal liability of the person committing the predicate offence also for the commission by the same person of the money laundering offence (self money laundering). Furthermore the definition of the money laundering offence liquidates the list of the most serious predicate offences that were previously the source of misunderstandings as to whether the offences included in the list could be considered as predicate offences.

The currently applicable definition of the money laundering offence is satisfactory, but the practice of investigations into such offences is still developing and further changes could be introduced in the future (according to the papers of the

funds or property, for which he/she is aware, or supposes that they were acquired through crime, shall be punishable by deprivation of freedom for one to five years and a fine of three to five thousand Levs. (2) The punishment shall be deprivation of freedom for one to eight years and a fine of five to twenty thousand Levs when the crime has been perpetrated: 1. by a group of persons who have colluded in advance, or by an organisation; 2. twice or more times; 3. by an official person in the scope of his/her duty. (3) (New - State Gazette No. 21 of 2000) The punishment shall be deprivation of freedom for ten to thirty years and a fine of twenty thousand to two hundred thousand Levs, when the crime has been perpetrated with funds or property for which the perpetrator was aware or supposed that they have been acquired through illicit traffic of narcotics and/or of their analogues, and/or of their precursors. (4) (New - State Gazette No. 85 of 1998, former paragraph 3, No. 21 of 2000) When the funds or the property are in particularly large amounts and the case is especially serious, the punishment shall be deprivation of freedom for three to twelve years and a fine of ten to thirty thousand Levs, while the court shall deprive the culpable person of civil rights as per art. 37, points 6 and 7. (5) (New - State Gazette No.85 1998, former paragraph 4, No. 21 of 2000) The object of the crime shall be confiscated in favour of the State and if it is missing or has been alienated, its equivalent shall be adjudicated.

⁴²³ Council of Europe, Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL), *First Evaluation Report on Poland. Summary*, Strasbourg, 11 February 2000 available at <http://www.coe.int> (verified on 13 January 2004).

Organised Crime Bureau – National Prosecutor’s Office, Warsaw 2003). In fact, the amended art. 299 CC is still rather vaguely formulated thus creating problems in its application.⁴²⁴ Moreover, the offence is still punishable only if committed with intention thus excluding all the hypothesis of ‘money laundering by negligence’.⁴²⁵

‘Participation in a criminal association’ is criminalized by art. 258 CC and punished with a three or a five year term respectively for the plain offence and for participation in an armed criminal group.⁴²⁶ This definition only partially reflects the provisions of art. 5 of the 2000 UN Convention. In particular, it is not specified that the subjective element of the offence can be inferred from objective factual circumstances, thus making it more difficult for prosecutors to prove it during trials. Furthermore the objective element of the offence is defined in a very general way in comparison with the detailed provisions of the internationally agreed definition. This vagueness of the legal terms makes it more difficult to identify the elements of the offence in concrete cases.

The definition of drug trafficking is comprehensive and in line with internationally accepted standards.⁴²⁷

2.2. CRIMINAL PROCEDURE

The criminal procedure framework is largely consistent with the internationally accepted standards. A vast range of special means of investigation may be applied to all serious crimes and particularly to drug trafficking related cases (interception of telephone conversations, fax and Internet transmission, audio and video recording of events taking place on private premises, covert methods such as controlled delivery, undercover operations and use of storefronts by investigative units). Interceptions and audio/video recording are allowed by a court order also for all other crimes, while the other means of investigations are decided upon by the Police Commander in Chief. The material intercepted can be used as evidence in organised crime investigations if the prosecutor court office makes the relative request, the Police Commander gives a positive answer on the basis of safety of the police source of information, and the it is accepted by the Ministry of Interior.

⁴²⁴ The lack of precision in the formulation of art. 299 CC might be the cause of its lack of application, as until 2002 nobody had been indicted under this offence. See A. Fijalkowski, ‘Money laundering, Corruption and drugs’ in A. Ott and K. Inglis (eds.), *Handbook on European Enlargement*, The Hague, 2002, p. 839.

⁴²⁵ Council of Europe, Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL), *Second Evaluation Report on Poland. Summary*, Strasbourg, 11 December 2003 available at <http://www.coe.int> (verified on 13 January 2004).

⁴²⁶ Article 258 (non official translation). 1. Whoever participates in an organised group or association having for its purpose the commission of offences shall be subject to the penalty of deprivation of liberty for up to 3 years. 2. If the group or association specified in § 1 has the characteristics of an armed organisation, the perpetrator shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years. 3. Whoever sets up the group or association specified in § 1 or 2 or leads such a group or association shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years.

⁴²⁷ See U.S. Department of State, *International Narcotics Control Strategy Report 2002*, released by the U.S. State Department, March 2003, available at <http://www.state.gov/g/inl/rls/nrcrpt/2002/html>, lastly verified in January 15, 2004.

Witness protection rules are contained in two instruments: the Crown Witness Act of 1997 (Number 114 of the Journal of Law, p. 738) and the Decree Law of 1998 on particular conditions, scope, manner of action and withdrawal of protection of crown witnesses and other persons. Also criminal procedure provisions regulate the position of witness in criminal trial.⁴²⁸ Foreign victims with illegal status are allowed to remain in Poland during the investigation and trial of their traffickers, but these legal provisions are rarely implemented due to the lack of funds for assistance.⁴²⁹

The Criminal Code of 1997 adopts the term 'forfeiture' instead of confiscation. General provisions on forfeiture are included in art. 44–45 CC. The Polish confiscation regime has an 'all crime approach', which means that it is possible to confiscate the proceeds of all types of criminal offences. According to art. 44–45 CC, both property and value confiscation is admitted. However, there are two weaknesses in the confiscation system provided for in the Polish criminal code. The first is the necessity of having a court decision establishing that a criminal offence has been committed before confiscation can take place. It is thus impossible to confiscate the proceeds of crime in the early stages of the proceedings, nor is it possible to have confiscation available in an independent proceeding, when the owner of the property is absent, dead or unidentified. Secondly, if there is a probable cause to believe that the property/money derives from a criminal offence and the owner or possessor is not able to give evidence that the property/gain was acquired legally, the national legislation does not allow the property/money to be confiscated. In this case the problem is that the criminal standard of proof is too high as it is the same as that necessary for the conviction of an individual. However, the amendment of the Penal Code of June 2003, which entered into force on 1 July 2003 (Law Journal 111, item 1061) introduced provisions provided for the reversal of evidentiary burden in these cases.

There are also special measures contained in the Special Part of the Penal Code regarding particular criminal offences. There is a special forfeiture provision under art. 299, para. 7 in the case of money laundering offences. This allows the mandatory forfeiture of items derived directly or indirectly from the offence.

2.3. DATA PROTECTION RULES

The Act on the Protection of Personal Data (29.08.1997)⁴³⁰ has been recently amended (Ministry of Interior Act of 2003) to follow more closely the provisions of the 1981 COE Convention, which has been ratified on 23.05.2002.

Poland concluded bilateral inter-governmental agreements with numerous countries on cooperation in combating organised crime and other crimes.

⁴²⁸ Art. 184 CCP: In situations where there is a threat to life, health or property of a witness or their relatives, their identity may be kept secret provided this does not influence the decision of a case. From the moment that the decision to protect a witness is made, their information becomes strictly confidential. All pieces of information referring to the witness's identity are only available to the court, the prosecutor and, if necessary, to the police officer in charge of the investigation. The witness's testimony can be available to the accused and his/her defence as long as the witness's identity can not be recognized.

⁴²⁹ U.S. Department of state, *Trafficking in Persons Report*, June 2003, cit.

⁴³⁰ The text in English of 1997 Act is available on the CD '*Legal Materials*' attached to this report.

Agreements contain general provisions for personal data protection, (e.g. 'both parties ensure protection of personal data protection mutually transmitted'). Agreements state that contacts are performed between authorised bodies, listed in the agreements: Minister of Interior, Head of Internal Security Agency, Chief Commander of the Police, Commander of the Border Guard, Minister of Finance, Prosecutor General. Secret and restricted (sensitive) information may only be transmitted between those authorised in both countries; data may be handed down to the police and other law enforcement agencies only after the consent of one of the above-mentioned bodies (the sender of data) pursuant to the rules laid down in respective internal Laws on data-protection. These kinds of agreements have been concluded with all SEE countries (with the exception of Albania, Bosnia and Herzegovina, FYRoM, Serbia and Montenegro, Moldova) and EU countries (with the exception of Denmark, Luxembourg, Portugal, Sweden, and the United Kingdom). There is also a Treaty with Europol regarding the transmission of data to and from this organisation (in force since 26 July 2002).

The provisions of the 2001 Act apply to both law enforcement agencies and to prosecution offices. They are duty-bound to make sure that personal data are not further processed in a way incompatible with the purposes for which the data were collected. Moreover they have to apply both technological and organisational security measures as set out by art. 36 of the Act on Personal Data Protection of 1997. The responsibility for the application of data protection rules lies with individual judges and prosecutors.

As to transborder data flows, even if law enforcement/prosecution offices may transfer personal data to other States that are not party to the 1981 COE Convention, this transfer is regulated by Chapter 7 of the Act on Personal Data Protection. There are also relevant provisions in Chapter 5 'international cooperation' of the Act of 6 July 2001 on Collecting, Transforming and Transfer of Criminal Information (Law Journal 5 October 2001). In the experience of the expert interviewed, requests for assistance have been refused because the recipient state could not guarantee the confidentiality of the communications.

A supervisory authority, the Inspector General of Personal Data Protection, has been created, which is independent and has, among the others, the power to bring violations of data protection rules to the attention of competent judicial authorities.⁴³¹

2.4. MULTILATERAL AND BILATERAL AGREEMENTS

a) Legislation

Poland has signed and ratified several international and European instruments for judicial and police cooperation: the European Convention on Extradition (1957 COE – ETS 024), the First additional Protocol to the European Convention on Extradition (1975 COE – ETS 086), the Second additional Protocol to the European Convention on Extradition (1975 COE – ETS 098), the European Convention on Mutual Assistance in Criminal Matters (1959 COE – ETS 030) and its additional Protocol

⁴³¹ See art. 12 of the 2001 Act.

(1978 COE – ETS 099). On 9 October 2003 Poland ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and adjusted its internal law to the requirements of the instrument.

In addition Polish police officers and prosecutors may make use of the international cooperation provisions provided for in the following instruments against organised crime: the United Nations Convention against Illicit Traffic of Drugs and Psychotropic Substances (1988), the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990, COE – ETS 141), the Criminal Law Convention against Corruption (1999 COE – ETS 173), and, since 2001, the 2000 United Nations Convention against Transnational Organised Crime and its Protocols.

Poland has ratified bilateral and multilateral agreements with other EU and SEE countries, but the preferred legal instrument for cooperation is the European Convention on Mutual Assistance in Criminal Matters (1959). Furthermore, Poland does not signed bilateral agreements with all neighbouring countries (for instance, a police cooperation agreement with Slovakia is missing).

Besides this international framework there exist national provisions (art. 588, para. 1, CCP),⁴³² which regulate judicial assistance and oblige prosecutors/investigating judges to respond to foreign assistance requests, provided dual criminality is fulfilled.

b) Practices

Among the international instruments for international judicial assistance, the most used are the European Convention on Extradition of 1957 and its protocols (the second used less than the first) and the European Convention on Mutual Legal Assistance in Criminal Matters and its protocols.⁴³³ The other instruments are rarely or never used in the experience of the prosecutor interviewed.

As to bilateral relations, the agreements with Slovakia, Austria, France, Germany, Italy and Sweden are often used, while those with Czech Republic, Hungary, Belgium, and the United Kingdom are used with a medium frequency. The agreements with the remaining countries are rarely used.

⁴³² Art. 588 CCP: (1) Courts and state prosecutors' offices shall give judicial assistance when requested by letters rogatory issued by the courts and the state prosecutors' offices of foreign states. (2) The court and the state prosecutors' office shall refuse to give judicial assistance and convey their refusal to the appropriate agencies of the foreign state in question, if the requested action is in conflict with the legal order of the Republic of Poland or constitutes an infringement of its sovereignty.

⁴³³ Also the Convention on the Transfer of Sentenced Persons (1983 COE – ETS 112) is often used in the experience of the public prosecutor interviewed.

2.5. DIRECT CHANNELS OF POLICE AND JUDICIAL COOPERATION

a) Legislation

Direct judicial cooperation agreements are in place with the Czech Republic, Hungary, Slovakia, Lithuania, Ukraine and Germany. Relevant agreements are due to be signed with Austria and France.

There are also formal agreements that provide for direct police cooperation with police in Bulgaria, Croatia, Czech Republic, Hungary, Romania, Lithuania, Latvia, Russia, Austria, France, and Germany.

Polish prosecutors/investigating judges, when directly contacted by colleagues of another country asking for assistance are obliged by law to forward the request for assistance to their competent colleagues, if they do not have jurisdiction to implement the request. They are also obliged to summon the witnesses and the experts, whose testimony under oath is requested for by colleagues of a foreign country. Other pieces of information and evidence can also be collected by a foreign prosecutor investigating in Poland, because Polish prosecutors are obliged by law to forward extracts of bank records and criminal records, when a specific request is made. They are also obliged to execute freezing, confiscation orders, and search warrants. They are also obliged to provide assistance regarding all the special and ordinary means of investigation available in Poland, but it must be mentioned that some means of investigation (audio and video recording of events taking place on private premises, undercover operations, use of storefronts by investigative units, covert methods such as controlled delivery) are considered 'operational measures' and may be executed by the police without a court order; thus the requests should be addressed to the competent police office.

With regards to direct cooperation and exchange of information between Polish police officers, there is a legal obligation for them to forward requests for assistance, which they have no jurisdiction over, to competent colleagues. If Polish police gather information on a transnational organised crime ring that could be useful to develop an investigation in another country, they are obliged by law to forward that information to the authorities of the other country. They share information contained in documents related to vehicle ownership, bank and phone records and documents related to criminal records. However, the related evidence is subject to request to the Prosecutor Office. Other types of data (criminal and police records consisting in personal information, photos and fingerprints for identification) may be requested from the Central Investigative Bureaux.

Finally, when foreign police officers start a shadowing operation (i.e. the covert observation of the movements of a person) in their country, they can be authorised to continue it within the borders of Poland in cooperation with the Polish police.

b) Practices

Judicial cooperation with Polish prosecutors/investigating judges can occur only through formal channels. If a formal agreement does not exist, they do not enter into direct contact with prosecutors/investigating judges of other countries. There are no liaison magistrates posted by Poland to other countries; thus Polish prosecutors have to contact diplomatic channels or liaison police officers in relevant

embassies in order to identify the name of a competent counterpart to whom to address their requests for assistance.

Polish police officers enter into direct contact with police of other countries (Germany, the Czech Republic, Slovakia, Sweden, The Netherlands, the United Kingdom, Italy, and Spain) also in the absence of formal agreements.

Other channels for direct police cooperation are:

- liaison officers, who have been recently posted to Russia, Ukraine, Germany and The Netherlands; they provide direct links with foreign law enforcement authorities, and help in exchanging information, and in identifying a partner for cooperation in individual cases;
- joint investigation teams (with the Czech Republic, Germany, The Netherlands, and Sweden);
- international joint customs surveillance operations (especially with Germany, The Netherlands, Sweden, and the United Kingdom).

All these three channels of direct police cooperation are considered highly useful by the experts interviewed, because they fulfil different tasks in the most effective way. According to the experts, these cooperation processes enable fast checking of data in national databases and help crossing language barriers in international contacts. Furthermore, they allow practical training in new working methods as well as in multilateral cooperation.

Direct police cooperation is enhanced by the good level of training of Polish officers, and by the general availability of effective communication devices (computer networks and official email accounts). Also Polish prosecutors have a good level of training in TOC cases, but effective communication devices are not available to all of them. Both police officers and prosecutors have no problems with languages as translators are readily available.

2.6. INTERNATIONAL AND REGIONAL ORGANISATIONS

a) Legislation

Interpol is the normal instrument for identifying the competent police counterparts in foreign countries. It also provides a series of useful information regarding investigations of crimes committed in Poland; investigations aimed at tracing goods located in Poland, which are related to crimes committed abroad; information regarding criminal records, information related to the ownership of vehicles and regarding driving licences issued in Poland.

There is also a cooperation agreement with Europol and Poland appointed a liaison officer at Europol Office in The Hague a few years ago. The Polish Ministry of Justice also appointed its representative at Eurojust. Poland is also prepared to cooperate within the EJM.

b) Practices

Interpol is also the only organisation, whose degree of cooperation could be assessed, in the experience of our experts. The following table illustrates the level of cooperation (where 0=no cooperation, 1=low level of cooperation, 2=medium level of cooperation and 3=high level of cooperation) in the different areas in which it operates. This evaluation is based on the personal judgement of the experts interviewed.

TABLE 11. DEGREE OF COOPERATION BETWEEN POLAND AND INTERPOL

Exchange of strategic and operational information	3
Exchange of financial information on suspected corporate entities	3
Provision of direct contacts with local law enforcement authorities	2
Provision of direct contacts with local prosecution offices	2
Exchange of information on investigative procedures and crime prevention methods	3
Training initiatives	2
Advice and support in individual investigations	1
Exchange of liaison officers	1
Participation in joint investigative teams in a support capacity	2
Participation in joint investigative teams in an operative capacity	1

3. GOOD PRACTICES**3.1. STRUCTURES SET UP FOR INTERNATIONAL COOPERATION PURPOSES**

The Prosecutor General's Office is the centralised authority through which public prosecutors/investigating judges have to channel their requests for international assistance. In the Prosecutor General's Office there is also a Department solely devoted to international judicial cooperation called the 'Department of International Relations in the National Prosecutor's Office'.

Polish police officers also have a centralised point of cooperation, the 'International Co-operation Bureau' which is located in General HQs of the Police.

The central above-mentioned authority for prosecutors has readily available translators for many languages (English, German, French, Russian, Chinese, Dutch, Serbian, Croatian, Turkish, Ukrainian and Lithuanian). Requests for assistance are only sent by mail (not by fax or email). A national standard form, which is used to ask for international assistance, is available only in mutual relations with Germany. For other countries prosecutors are obliged to keep to a strictly request format.

The time necessary to satisfy an assistance request made to a foreign State is very long as it can amount to more than two months.

As to the authorities for police cooperation, they satisfy all requests for assistance from abroad usually within a few days and can also act even more rapidly in urgent situations.

3.2. DATABASES ON ORGANISED CRIME

Poland is well advanced as far as databases and access to them by foreign police officers is concerned. At the moment there are two national centralised databases, which contain information about persons wanted and convicted for participating in OC groups. Both of them are accessible by foreign police officers. There are, however, some conditions that must be fulfilled: ratification of international conventions and bilateral agreements on police co-operation, official request for information pointing out relevant data such as the reason of interest (link with Poland), target (type of crime), stage of police case (procedural, operational), standard of data protection.

No common criminal databases have yet been established to directly share OC information collected in Poland with foreign counterpart colleagues.

3.3. MODI OPERANDI/METHODS IN THE INTERNATIONAL COOPERATION PROCESS

Poland has enacted the following *modi operandi*/methods to speed up the international cooperation process:

- acknowledgement of all requests and written enquiries concerning the execution of requests;
- providing the requesting authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing the request;
- setting priority to requests which have clearly been marked 'urgent' by the requesting authority;
- giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authority how the difficulty might be overcome;
- stating when the assistance requested is likely to be provided;
- explaining the reasons for the urgency or deadline;
- ensuring that requests are submitted in compliance with the relevant treaty or other international arrangements;
- providing the requested authorities with the name and contact details, including telephone and fax numbers, of the authority and, if possible, the person responsible for issuing the request;
- compliance with the formalities and procedures expressly indicated by the requesting member state;
- spontaneous exchange of information;

- establishment of common criminal databases;
- joint operational meetings;
- interagency coordination protocols.

Besides these commonly accepted good practices, Poland has also enacted the following:

Working meetings

Working meetings are organized on a daily basis with police officers (on co-operation matters or on investigations of common interest): Furthermore, regular liaison officer meetings with heads of the Police office are organized once or twice per year.

OC reports

Reports on OC in Poland are regularly sent to liaison officers and international organizations (Interpol, EUROPOL, UNDOC).

Unified forms on international assistance in criminal matters

Standardized forms on international cooperation in criminal matters exist only between Poland and Germany. This standardization is considered a good practice, because it speeds up the procedure. Furthermore, when simple matters are dealt with, the forms are forwarded in English, thus avoiding the time necessary for translations.

Unified databases

A National Criminal Information Centre began its activities in January 2003 and is still under development as the nationwide, multi-agency network. It brings together several existing databases and thus improves the speed of information exchange.

4. EMERGING OBSTACLES

The analysis of legislation, practices and good practices relevant for international cooperation against organized crime has highlighted some shortcomings that are reported here for the sake of clarity, as they represent the background and rationale for the recommendations included in paragraph 5.

4.1. OBSTACLES IN LEGISLATION

1) The vagueness of the criminal definition of participation in a criminal organisation

The definition of 'participation in a criminal association' contained in art. 258 CC only partially reflects the provisions of art. 5 of the 2000 UN Convention. In particular, it is not specified that the subjective element of the offence can be inferred from objective factual circumstances, thus making it more difficult for prosecutors to prove it during trials. Furthermore the objective element of the offence is defined in a very general way in comparison with the detailed provisions

of the internationally agreed definition. This vagueness makes it more difficult to identify the elements of the offence.

2) The exclusion from the money laundering criminal definition of the hypothesis of 'money laundering by negligence' and the vagueness of art. 299 CC.

Art. 299 of the Polish Criminal Code has recently been updated to bring it up to international and European standards. Many of the previous problematic points have been addressed (e.g. list approach, and lack of criminalisation of self money laundering). However the offence is still punishable only if committed with intent, thus excluding the hypothesis of 'money laundering by negligence'.

Furthermore, the provisions of art. 299 CC are formulated in such an imprecise way as to make it impossible for the prosecutors to apply them.

3) The gaps in the confiscation regime

After the amendments of the Penal Code of June 2003, one of the two weaknesses of the Polish confiscation regime (the lack of the so-called 'reversal of the burden of proof') has been eliminated. However, there is still the necessity of having a court decision establishing that a criminal offence has been committed before confiscation can take place. It is thus impossible to confiscate the proceeds of crime in the early stages of the proceedings, nor it is possible to have confiscation available in an independent proceeding, when the owner of the property is absent, dead or unidentified.

4) The missing bilateral agreements with Belarus and Slovakia

Although Poland has ratified many multilateral instruments for police and judicial cooperation, it did not conclude bilateral agreements for judicial cooperation with Belarus and for police cooperation with Belarus and Slovakia. The lack of bilateral instruments with all neighbouring countries might impair the cooperation process at a practical level, because through the deployment of solely multilateral instruments, it is not possible to reach the level of definition and detail achieved by bilateral agreements.

5) The absence of liaison magistrates posted abroad

There are no liaison magistrates stationed by Poland in foreign countries, who might expedite the cooperation process. This absence, especially, with the countries where most of the assistance requests are addressed causes the cooperation process, and thus exchange of information, to slow down.

4.2. OBSTACLES IN PRACTICES

6) The inadequacy of technological equipment available to prosecutors

Computer networks (intranets) and official e-mail accounts are not available to all Polish prosecutors. The lack of these tools represents an obstacle when dealing with TOC cases, because they require a fast exchange of information, which is difficult to achieve without adequate means of communication.

4.3. OBSTACLES IN GOOD PRACTICES

7) The inadequacy of technological equipment available to central authorities dealing with international judicial cooperation and the lengthiness of the assistance procedures

Central authorities managing requests of international judicial cooperation do not use email or fax to send requests for cooperation. This, combined with the fact that they do not use a national standard form to ask for international assistance, contributes to lengthen the time necessary to get an answer to assistance requests (more than two months).

4.4. OTHER OBSTACLES MENTIONED BY THE EXPERTS

8) Obstacles to investigating organised crime

The experts interviewed mentioned the following as the most significant obstacles to investigating organised criminal groups:

- lack of legislation (in particular on means of investigation and witness protection);
- use, by organised criminal groups, of dummies, i.e. people of apparent, but with no real power over the criminal members' assets;
- lack of human resources within the offices participating in organised crime investigations;
- lack of material resources within the offices participating in organised crime investigations.

9) Obstacles to police assistance

The experts interviewed mentioned the following as the most significant obstacles to *police assistance* received by Poland from other countries in pre-trial investigations into transnational organised crime:

- lack of response to requests for assistance;
- delay of response to requests for assistance;
- lack of harmonisation in legislation;
- lack of financial resources.

10) Obstacles to judicial assistance

The experts interviewed mentioned the following as the most significant obstacles to *judicial assistance* received by Poland from other countries in pre-trial investigations into transnational organised crime:

- lack of response to requests for assistance;
- delay of response to requests for assistance;
- lack of harmonisation in legislation and lack of training.

5. RECOMMENDATIONS

5.1. RECOMMENDATIONS ON LEGISLATION

Recommendation n. 1

'Improving the definition of participation in a criminal association'

Background and rationale

The definition of 'participation in a criminal association' contained in art. 258 CC only partially reflects the provisions of art. 5 of the 2000 UN Convention. In particular, it is not specified that the subjective element of the offence can be inferred from objective factual circumstances, thus making it more difficult for prosecutors to prove it during trials. Furthermore the objective element of the offence is defined in a very general way in comparison with the detailed provisions of the internationally agreed definition. This vagueness makes it more difficult to identify the elements of the offence.

Recommendation

Action should be taken to correct the criminal definition of organised crime and bring it up to UN and internationally recognised standards.

Implementing measures

The criminal definition of organised crime contained in 258 CC should be reformulated taking into account the above mentioned gaps in the current definition.

Recommendation n. 2

'Improving the criminal definition of money laundering'

Background and rationale

Art. 299 of the Polish Criminal Code has recently been updated to bring it up to international and European standards. Many of the previous problematic points have been addressed (e.g. list approach, and lack of criminalisation of self money laundering). However the offence is still punishable only if committed with intent, thus excluding the hypothesis of 'money laundering by negligence'. Furthermore, the provisions of art. 299 CC are formulated in such an imprecise way as to make it impossible for the prosecutors to apply them.

Recommendation

Action should be taken to expand the criminal definition of money laundering.

Implementing measures

Polish legislators should modify article 299 of the Criminal Code and lower the subjective element as to include 'money laundering by negligence'.

Recommendation n. 3

'Improving the confiscation regime'

Background and rationale

After the amendments of the Penal Code of June 2003, one of the two weaknesses of the Polish confiscation regime (the lack of the so-called 'reversal of the burden of proof') has been eliminated. However, there is still the necessity of having a court decision establishing that a criminal offence has been committed before confiscation can take place. It is thus impossible to confiscate the proceeds of crime in the early stages of the proceedings, nor it is possible to have confiscation available in an independent proceeding, when the owner of the property is absent, dead or unidentified.

Recommendation

Action should be taken to improve the confiscation regime to make it more easily available to prosecutors.

Implementing measures

Polish authorities should enact the prepared draft legislation making forfeiture also available in the early stages of the proceedings or in an independent proceeding.

Recommendation n. 4

'Concluding agreements on police and judicial cooperation with all neighbours'⁴³⁴

Background and rationale

Although Poland has ratified many multilateral instruments of police and judicial cooperation, it did not conclude bilateral agreements for judicial cooperation with Belarus and for police cooperation with Belarus and Slovakia. The lack of bilateral instruments with all neighbouring countries might impair the cooperation process at a practical level, because through the deployment of solely multilateral instruments, it is not possible to reach the level of definition and detail achieved by bilateral agreements.

Recommendation

Action should be taken to conclude bilateral agreements on police and judicial cooperation with all neighbouring countries.

Implementing measures

The Polish government should conclude bilateral agreements on police and judicial cooperation with all neighbouring countries and in particular with Belarus for judicial cooperation, and with Belarus and Slovakia for police cooperation.

⁴³⁴ Suggestion coming directly from the judicial expert as well.

Recommendation n. 5

'Enhancing the channels of direct judicial cooperation'

Background and rationale

There are no liaison magistrates posted by Poland to foreign countries, who might expedite the cooperation process. This absence, especially, with the countries where most of the assistance requests are addressed causes the cooperation process and exchange of information to slow down.

Recommendation

Action should be taken to enhance direct channels of judicial cooperation.

Implementing measures

Poland should station liaison magistrates abroad, especially in the countries where most of the requests for assistance are addressed.

5.2. RECOMMENDATIONS ON PRACTICES

Recommendation n. 6

'Improving technological equipment available to prosecutors'⁴³⁵

Background and rationale

Computer networks (intranets) and official e-mail accounts are not available to all Polish prosecutors. The lack of these tools represents an obstacle when dealing with TOC cases, because they require a fast exchange of information, which is difficult to achieve without adequate means of communication.

Recommendation

Action should be taken to improve the technological equipment available to prosecutors investigating TOC cases.

Implementing measures

All prosecutors investigating TOC cases should be provided with a computer network and an official e-mail account by their agency.

⁴³⁵ A Suggestion also made by the police and the judicial expert. The police expert emphasised that, although the all Polish officers investigating TOC cases are provided with email and intranet, the technological equipment needs to be modernized, for example with the deployment of computer tools for criminal analysis.

5.3. RECOMMENDATIONS ON GOOD PRACTICES

Recommendation n. 7

'Improving technological equipment available to central authorities'

Background and rationale

Central authorities managing requests of international cooperation do not use email or fax to send requests for cooperation. This, combined with the fact that they do not use a national standard form to ask for international assistance, contributes to lengthen the time necessary to get an answer to assistance requests (more than two months).

Recommendation

Action should be taken to improve the means adopted to send requests for cooperation and to standardise the forms used for requesting assistance.

Implementing measures

Central authorities should be able to use fast methods of communication to send the requests for cooperation. For example they should be able to send requests by fax and email and use a national standard form.

8.8.

ROMANIA⁴³⁶

INTRODUCTION

Romania is bordered by Ukraine, Moldova, Hungary, the Federal Republic of Yugoslavia and Bulgaria. It is a constitutional democracy with a multiparty parliamentary system. Former Communists had a profound influence on the government until 1996. The first free parliamentary and presidential elections were held in May 1990 and September 1992. Romanians voted in a referendum on a new Constitution in October 2003, which is meant to bring their country into line with members of the European Union. Romania has been a UN member since 14.12.1955 and a COE member since 7.10.1993. In 2004 Romania became full member of NATO.⁴³⁷

Romania introduced its new Criminal Code in 1978, shifting from the soviet model of the two previous penal codes promulgated during the early period of communist rule. The Code of Criminal Procedure was enacted on 01.01.1969. The criminal procedure code has been replaced by Law n. 281 of 24 June 2003 and by Emergency Ordinance n. 66 of 10 July 2003. The Criminal Code has been upgraded through Law n. 269/2002, while a new Criminal Code is still being debated by Parliament.

New legislation on organized crime activities has recently been enacted. The following instruments are particularly relevant: Law 161/2003 *regarding the prevention and combating of computer crimes*, Law n. 39/2003 *on the prevention and sanctioning the organized crime*, Law n. 218/2002 *on the police*, Law n. 656/2002 *on Money Laundering*, and Law n. 678/2001 *on Trafficking in Persons*, Law n. 143/2000 *on the Combating of Consumption and Trafficking of Drugs*, and Law n. 300/2002 *Setting up the Legal Framework for Precursors used for Illicit Production of Drugs*.

As to national law enforcement structures, there are at least three specialized units against organized crime:

- the General Directorate for Combating Organized Crime and Drug Trafficking (GDCOC),⁴³⁸

⁴³⁶ The Romanian country profile was based, among other materials, on the answers given by the following experts: Mr. Florin Neagu, Expert Officer, Ministry of Administration and Interior, Romanian National Focal Point, Bucharest; Mrs. Adina Petrescu, Chief Prosecutor of Liaison Office, National Anti-corruption Prosecution's Office, Bucharest; Mr. Mihai Chiorcea, Antidrug Squad, General Directorate to Counter Organised Crime, Bucharest. They answered to two questionnaires: one in autumn 2002 and one in summer 2003. The final revision and updating was carried out by Mr. Florin Neagu and Mrs. Adina Petrescu in May 2004.

⁴³⁷ Detailed information on the main Romanian democratic institutions and its judiciary is available at: <http://www.legislationline.org> (last verified on 18 February 2004). See also Central Intelligence Agency (CIA), *The World Fact book 2003*, available at <http://www.cia.gov/cia/publications/factbook/index.html> (last verified on 18 February 2004).

⁴³⁸ The GDCOC has been recently praised by the U.S. Secret Services for its activities in the fight against organized crime activities. See U.S. Department Of Homeland Security, 'United States Secret Service and

- the National Office for Money Laundering;
- the National Anti-Corruption Prosecutor's Office;⁴³⁹
- Prosecutor's Office attached to the High Court of Justice and Cassation.

The establishment of specialised courts on organised crime are expected by June 2004, while specialised squads for combating organised crime have already been set up within Prosecutors offices (Law no. 39/2003 *on the prevention and sanctioning the organized crime*).

1. THE ORGANISED CRIME SITUATION

1.1 FEATURES OF THE ORGANISED CRIMINAL GROUPS

Following three years of recession from 1997 to 1999,⁴⁴⁰ during which the worsening economic situation bolstered national and international organised crime,⁴⁴¹ Romania's economy bounced back. Growth was spurred by a dynamic export sector and there was a slight increase in investment and public consumption.⁴⁴² The recent economic development and a controlled level of inflation have encouraged international monetary institutions to support Romania by granting substantial loans to carry out economic reform.

In Romania there are about 40 to 50 organised criminal groups, with participants ranging between 10 and 50 for each group. However, according to the latest statistics provided by the Romanian General Directorate for Combating Organised Crime and Drug Trafficking, in 2003, 38 criminal organised groups, comprised of

Romanian Police work together to solve Major Computer Fraud Investigation', in *Secret Service Release*, 11 September 2003.

⁴³⁹ In May 2000 the Romanian Parliament adopted Law n. 78/2000 on preventing, discovering and combating corruption, which established the first specialised inter-institutional investigative anti-corruption group: the Anti-Corruption and Anti-Organised Crime Section of the Prosecutor's Office attached to the Supreme Court of Justice with its territorial structures. The Romanian anti-corruption strategy further developed after the enactment of Law n. 161/2003 regarding some measures for guaranteeing transparency in the business environment and in carrying out public office and civil service.

The National Anti-Corruption Prosecutor's Office (NAPO) is an autonomous structure under the authority of the MOJ. When competent, prosecutors within this structure can use special investigative powers for the purpose of gathering evidence, such as surveillance of bank accounts, surveillance and interception of communications, access to IT systems, undercover agents (when there are no other methods available). NAPO prosecutors also have the power to order specific measures regarding witness protection. What is more interesting for international judicial mutual assistance purposes is that NAPO has a dedicated Liaison Office operating using Romanian legislation in accordance with the *acquis communautaire*. The Liaison Prosecutor is in charge of the exchange of data and information (within NAPO's competency) with liaison magistrates from other countries. See National Anti-Corruption Prosecutor's Office, *The Fight against Corruption in Romania*, unpublished.

⁴⁴⁰ GRECO, *Evaluation Report on Romania*, adopted by GRECO at its 8th Plenary Meeting (Strasbourg, 4-8 march 2002), available at: <http://www.greco.coe.int> (last verified on 7 April 2004).

⁴⁴¹ Observatoire Geopolitique des Drogues (OGD), 'Annual Report. Part Three: Europe', in *Crime, Law and Social Change*, Kluwer Academic Publisher, April 2001, vol. 36, Issue 1 - 2, p. 103 - 165.

⁴⁴² GRECO, *Evaluation Report on Romania*, cit.

11 to 50 members, and 598 groups comprised of less than 10 members were investigated. The structure of the organised criminal groups may vary from permanent hierarchical to more or less permanent horizontally structured networks or project-based groups. These groups are mainly formed by nationals and non-nationals. The non-nationals taking part in the groups are Albanians, Serbians⁴⁴³, Arabs, Moldavians, Iranians, Russians and Ukrainians.

Arab citizens are involved in drug trafficking and money laundering. Ukrainian citizens have been involved in trafficking in human beings. Romania is also a base for other criminal organisations⁴⁴⁴, especially Turkish and Kurdish gangs.⁴⁴⁵

Romanian citizens have become visible participants in organised crime and lately they have been expanding their criminal activities outside the borders of the country. In fact, although in Romania organised criminal groups operate mainly on a national scale, there are some groups that operate in the Czech Republic, FYRoM, FRY, Moldova, Turkey, Austria, France, Germany, Greece⁴⁴⁶, Italy and Spain.

In Germany there are indications that Romanian gangs are using minors as thieves, thus benefiting from the fact that if caught by the authorities these minors will be exempt from criminal procedures.⁴⁴⁷ Organised criminal groups operating in Greece and composed of Greek nationals and Romanians are particularly active in armed robbery and also in car theft and illegal dealings in stolen vehicles.⁴⁴⁸ Romanian illegal immigration networks have shown themselves to be of particular cause for concern in France.⁴⁴⁹

In Romania criminal groups formed by nationals cooperate with each other and also with organised criminal groups based in Italy, Spain, France, Albania, Bosnia and

⁴⁴³ Police sources confirm the presence of Albanians and Serbians, but prosecutorial sources state that there are no statistical data on developing activities specific to organised crime in Romania by Albanian and Serbian citizens, who are involved in committing crimes on their national territory.

⁴⁴⁴ Judicial statistics do not confirm that a high proportion of criminal activities are carried out by foreign citizens: in the period 1 January – 28 June 2002, 44 foreign citizens were sent for trial for committing crimes against property; 29 foreign citizens for committing crimes of drug and toxic substances trafficking and 3 foreign citizens for committing crimes of procurement.

⁴⁴⁵ *'Some of the activities attributed in Romania to Turkish individuals or rings are in fact carried out by Kurds, usually with links to the Kurdistan Workers' Party (PKK). Most Kurds living in Romania have Turkish nationality, but some are citizens of Syria, Iraq and a few are from the CIS'*, available at: http://www.ogd.org/rapport/gb/RP07_4_ROUMANIE.html (last verified on 7 April 2004).

⁴⁴⁶ *'In 1998 various criminal gangs were active in Greece, consisting of Greek, Albanian, Russian, Turkish, Romanian, Bulgarian, Yugoslavian and, to a lesser extent, other nationals. These gangs consisted of small groups of 2 to at most 10 individuals, with an unclear hierarchy below the level of ringleader, who joined forces mainly with a view to jointly committing crimes for pecuniary gain. On occasions the composition of these groups varied from crime to crime. In many cases Greek criminals conspired with foreigners, in particular Albanians, Romanians, Bulgarians, Russians and occasionally nationals of other countries'*, in EUROPOL, *1998 EU Organised Crime Situation Report*, The Hague, 3 February 2000, p. 49.

⁴⁴⁷ IOM, *Migration Trends in Selected Applicant Countries. Vol. IV – Romania*, Autumn 2003, available at: http://www.iom.int//DOCUMENTS/PUBLICATION/EN/IOM_IV_RO.pdf (last verified on 7 April 2004), p. 34–35.

⁴⁴⁸ EUROPOL, *1998 EU Organised Crime Situation Report*, p. 50.

⁴⁴⁹ *Ibidem*, p. 41.

Herzegovina, the Czech Republic, FYRoM, Yugoslavia, Moldova, Turkey, Iran and Afghanistan. National judicial data shows that there is cooperation among groups of Romanian criminals and groups of criminals from other countries, especially from Western Europe and have less contact with the criminal organisations from the Former Soviet Union.

1.2. ACTIVITIES OF THE ORGANISED CRIMINAL GROUPS

Romania is a country where a variety of cross-border criminality takes place and it is on the increase.⁴⁵⁰

According to the GRECO Evaluation Team⁴⁵¹ '*links exists between **corruption** and organised crime in Romania, but no more than in other countries in the region, bearing in mind the cross-border nature of this crime and its recent proliferation. The most serious acts of corruption are directly linked to organised crime, with the attendant risk that government bodies and the judicial system have been infiltrated*'. Recent sources indicate that corruption remains a serious problem within the Romanian government, including within the judiciary and law enforcement branches: the public service is reported to be affected by high levels of corruption⁴⁵² and also the banking system has been seriously undermined by corruption.⁴⁵³

Organised crime is involved in the following criminal activities that cause concern: drug and precursor trafficking, international trafficking in stolen cars and other excise goods (such as cigarettes). Romania is also an origin, transit and destination country for trafficking in human beings. The laundering of domestic proceeds from organised crime is a significant problem and the crimes that are reported to generate illicit proceeds are: smuggling of goods, drug trafficking, fraud, tax evasion, prostitution, arms trafficking and alien smuggling.⁴⁵⁴

⁴⁵⁰ Romanian organised groups, together with Bulgarian, are currently considered as one of the main threats to the EU by law enforcement agencies. See EUROPOL, *2003 EU Organised Crime Situation Report*, available at: <http://www.europol.eu.int/publications/EUOrganisedCrimeSitRep/2003/EUOrganisedCrimeSitRep2003.pdf> (last verified on 15 April 2004).

⁴⁵¹ GRECO First Evaluation Round, 'Evaluation Report on Romania', adopted by GRECO at its 8th Plenary Meeting (Strasbourg, 4–8 march 2002), available at: <http://www.greco.coe.int>

⁴⁵² 'The Ministry of Administration and Interior, Ministry of Justice and Customs underwent a major reorganization at the beginning of the year 2003, resulting in several dismissals of high officials within the police'. U.S. Department of State, *International Narcotics Control Strategy 2003*, March 2004, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2003/> (last verified on 7 April 2004). See also UNODC, *Corruption – Romania Project*, 2004, available at: http://www.unodc.org/unodc/en/corruption_projects_romania.html (last verified on 7 April 2004).

⁴⁵³ 'More than a half-dozen banks have closed because of political interference and questionable loans. Some candidates for elected office pay large sums of money to get a party to nominate them. On 28 January 2002 Romania Libera, an anti-government newspaper, charged that 15 ministers and top government officials are undeclared company owners. Some of them reacted by saying their companies are no longer operating, and at least one said he would sell his firm'. See A. Mutler, 'Poverty, Corruption Haunt Romania', in Global Policy Forum, 17 February 2002, available at: <http://www.globalpolicy.org/nations/laundryregions/2002/0217romania.htm> (last verified on 7 April 2004).

⁴⁵⁴ TRANSCRIME, *EUROSHORE, Protecting the EU Financial System from the Exploitation of Financial Centres and Off-Shore facilities by Organised Crime*, Annex A, Country Profiles, January 2000, p. 210.

As far as **drug trafficking** is concerned, Romania is situated on the crossroads of a major European communication route, the so-called Northern Balkan Route.⁴⁵⁵ Its geographical position (equal distance from the production countries and destination countries) makes it a transit country for narcotics moving from Southwest Asia through Turkey and Bulgaria, to finally Western Europe. The same route on the opposite direction is exploited for precursor chemicals. Romania is also becoming of increasing interest for the international transport of narcotics from South America to Europe, especially to Germany, the Netherlands, Belgium and Austria.⁴⁵⁶ Since 1989 a profitable internal market for drugs has also developed in the country.⁴⁵⁷ Over the past few years, it has become a country where drugs are stored. Drugs arrive in Romania through different means (by land, by sea or by air), remain on the territory for a short or long period of time (from several days to several months) and then are transported to other countries. The country is also a centre for processing opium and morphine base into heroin, as shown by large seizures of precursor chemicals.

Romanian police identified the following tendencies:

- Romania has now also become a storage point, the drugs are introduced mainly, through the southern frontiers, stockpiled for various periods of time and finally moved towards countries with high consumption rates. A small part of these drugs remain in the country for internal consumption;
- the quantities of heroin destined for sale in Romania, or in transit, heading to Western European countries are being transported and trafficked mainly by Turks and Iranians. In some cases the heroin is taken from Romania or from other countries, using Romanian trucks and then carries on towards Germany, the Netherlands and Great Britain. There is an active cocaine trafficking route from Ecuador and Columbia. The arrival points are airports in places like Spain, Hungary, Croatia and Romania;

Another type of organised criminal activity in Romania involves the theft of **luxury cars** in western countries, which are then sold through various channels. Cooperation between Romanian criminals and Italian, German, Polish and Bulgarian networks is evidenced by the sale of stolen cars using false documents. Investigations of major cases indicate that east-European groups of criminals commit a large number of thefts in Denmark. The perpetrators are grouped by nationality and come primarily from the Baltic States, Poland and Romania.⁴⁵⁸

⁴⁵⁵ U.S. Department of State, *International Narcotics Control Strategy 2003*, March 2004, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2003/> (last verified on 7 April 2004).

⁴⁵⁶ C. M. Matei, *Organised Crime and Corruption in the South-East European Countries*, available at: <http://www.10iacc.org/download/w1-03.pdf> (last verified on 7 April 2004).

⁴⁵⁷ Drug abuse in Romania is increasing especially with regard to heroin (mainly in Bucharest) and MDMA. See European Monitoring Centre for Drugs and Drug Addiction, 'Country Profile - Romania', in *Annual Report 2003: the State of the Drugs Problem in the Acceding and Candidate Countries to the European Union*, available at: <http://www.candidates.emcdda.eu.int/en/page74-en.html> (last verified on 7 April 2004).

⁴⁵⁸ EUROPOL, *1998 EU Organised Crime Situation Report*, cit., p. 31.

The operational methods of the traffickers have been diversified so that, along with the classic ones – theft and robbery, theft with the owner’s approval, misappropriation from the car rental companies, the alteration of the identification marks – there are those of leasing vehicles and then their illegal exportation by the user and their registration in Romania using counterfeit documents.

With regards **trafficking in human beings**, statistics from the Prosecutor’s Office attached to the Supreme Court of Justice, show that in the period 1999 – 2002 there were 401 cases of trafficking in human beings. The destination countries of the trafficked people were Bosnia and Herzegovina, FYRoM, Albania, Kosovo, Italy and Spain. Most of the persons trafficked were adults – 77%, the majority being young people aged between 18 and 22 years old. The remaining 23% were minors.

Romania is both a transit country and origin country for women exploited for prostitution by networks of traffickers. The **women** come not only from Romania but also from Moldavia and the Ukraine and are trafficked towards Bosnia–Herzegovina, Serbia and Montenegro, FYRoM, Kosovo, Albania, Greece, Turkey, Hungary, Austria, Germany, Italy and Cyprus.⁴⁵⁹ Police data show that young girls from Romania are also trafficked to Japan, South Africa and the United Arab Emirates. According to NGOs, the number of Romanian women trafficked abroad for sexual exploitation is impressive: in Turkey alone there are more than 10,000 Romanian prostitutes.⁴⁶⁰ There is also evidence of trafficking of **men** from Romania for forced labour. In this context over 30 people were arrested in 2002.⁴⁶¹ One of the most serious forms of trafficking in persons in Western Europe regards young unaccompanied **children** from Romania (often from the Roma minority). They are exploited for begging, selling goods and flowers, washing car windows, and small crimes.⁴⁶² It is also reported that a considerable number of Romanian street children are sold every year to German and Dutch prostitution markets.⁴⁶³ In this trafficking the involvement of the Roma community is growing, as confirmed by the number of Roma pimps arrested.⁴⁶⁴

⁴⁵⁹ U.S. Department of state, *Trafficking in Persons Report*, June 2003, available at: <http://www.state.gov/g/tip/rls/tiprpt/2003/21275.htm> (last verified on 7 April 2004). See also ‘Combat of Trafficking in Women for the Purpose of Forced Prostitution, *Romania Country Report*, BIM, funded by the Austrian Minister for Women’s Affairs, Vienna; published by the Ludwig Boltzmann Institute of Human Rights, Vienna 2000, p. 10.

⁴⁶⁰ M. Lehti, *Trafficking in women and Children in Europe*, HEUNI Paper n. 18, Helsinki 2003, p. 23–24, available at: <http://www.heuni.fi/uploads/to30c6cjxyah11.pdf> (last verified on 7 April 2004).

⁴⁶¹ UNICEF/UNOHCHR/OSCE, *Trafficking in Human Beings in South Eastern Europe*, UNICEF, 2003, p. 105–122, available at: http://www.osce.org/documents/odihr/2003/12/1645_en.pdf (last verified on 7 April 2004), p. 92.

⁴⁶² UNICEF/UNOHCHR/OSCE, *Trafficking in Human Beings in South Eastern Europe*, cit., p. 98.

⁴⁶³ M. Lehti, *Trafficking in women and Children in Europe*, cit., p. 26. See also I. Iftimie, ‘Sexual Trafficking: an Appalling Abuse of Human Rights’ in *Human Rights Report*, 21 October 2003, available at: http://www.hrr.ro/articol.php?ID_articol=415&limba=en (last verified on 7 April 2004): ‘*On past occasions, twelve years old girls have been promised shelter out of the country, food and drugs in exchange for sexual favours. There are now plenty of adult movies on the Internet with minors from Romania.*’

⁴⁶⁴ South East European Regional Initiative Against Human Trafficking, *Romania– Migration, Prostitution and Trafficking*, 2002/2003, available at: <http://www.seerights.org/main.php?val=261&PHPSESSID=8f0b38407dd8cbd39560478092045337&PHPSESSID=8f0b38407dd8cbd39560478092045337> (last verified on 7 April 2004).

Like other countries in Eastern Europe, corruption and the presence of organized crime facilitate money-laundering activities in Romania. The Romanian National Office Against Money Laundering estimates that \$1.64 billion euros has been laundered in Romania since 2001. Money laundered comes primarily from domestic criminal activity carried out by international crime networks.⁴⁶⁵ Typical criminal activities related to money laundering are: smuggling, banking/financial fraud, vehicle theft, drug trafficking, money counterfeiting, procurement. Embezzlements (on the decrease) and tax frauds committed by organised groups mainly to the prejudice of the State Budget (on increase).⁴⁶⁶

2. LEGISLATION AND PRACTICES

2.1. CRIMINAL LAW

Romania has enacted several international and European instruments against organised crime. The 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime has been ratified on 01.12.2002. The 1999 Council of Europe Criminal Law Convention on Corruption entered into force on 01.11.2002. The 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic was ratified on 21.03.1993. However, the 2000 United Nations Convention against Transnational Organised Crime and its first two Protocols have only been signed.

The national definitions of the most common organized crime activities have been recently amended to meet the standards requested by the international community. Some of those definitions are the drug trafficking by Law n. 143 of August 2000,⁴⁶⁷

⁴⁶⁵ U.S. Department of State, *International Narcotics Control Strategy 2003*, March 2004, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2003/> (last verified on 7 April 2004).

⁴⁶⁶ European Committee On Crime Problems (CDPC)–Select Committee Of Experts On The Evaluation Of Anti–Money Laundering Measures MONEYVAL (PC–R–EV), *Second Round Evaluation Report On Romania–Summary*, Strasbourg, 4 July 2003, available at: http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Combating_economic_crime/Money_laundering/Documents/2nd_round/SUMMARY%20IInd%20report%20on%20Romania%20E.asp#P41_1865 (last verified on 7 April 2004).

⁴⁶⁷ Definition of drug trafficking according to Law n. 143/2000 (Official translation): Article 2 (1) Unlawful cultivation, production, manufacturing, experimentation, processing, transformation, offering, setting to sale, sale, distribution, delivery under any title, shipment, transportation, procurement, purchasing, possession or any operation related to risk drugs, shall be punished with imprisonment from 3 to 15 years and prohibition of certain rights;(2) If the acts provided by paragraph 1 relate to high –risk drugs, the punishment shall be imprisonment for a term of 10 to 20 years and prohibition of certain rights.

Article 3 (1) Bringing risk drugs in or taking them out of the country as well as importing or exporting them , without a lawful authorisation shall be punished with imprisonment for a term of 10 to 10 years and prohibition of certain rights; (2) If the acts provided by Art.1 refer to high risk drugs, the punishment shall be imprisonment for a term of 15 to 25 years and prohibition of certain rights.

Article 10 Organising, conducting or financing criminal acts provided by Articles 2–9 shall be punished by relevant legal sanctions, the maximum limits be increased by a period of three years.

Article 12 (1) Should the acts provided by Articles 2,3 and 5 be committed by a person pertaining to an organisation or association or to a group of at least three members with definite structures and, established in order to commit those acts and get benefits and other proceeds from crime, he/she shall be punished with life imprisonment or imprisonment for a term of 15 to 25 years and prohibition of certain rights. (2) The acts provided by Articles 4,6,7,9 and 11 when committed under the conditions stipulated under

the trafficking in persons by Law n. 678 of December 2001,⁴⁶⁸ and the money laundering by Law n. 656 of December 2002.⁴⁶⁹

The provisions on participation in a criminal association are still those provided for by the 1968 Criminal Code,⁴⁷⁰ but special legislation has recently been enacted in

paragraph (1) shall be punished with imprisonment for a term of 3 to 15 years. (3) In case that any of the acts provided by Articles 2,3 and 5 results in the victim's death, the offender shall be punished by life imprisonment or by imprisonment for a term of 15 to 25 years and prohibition of certain right.

⁴⁶⁸ Definition of trafficking in persons (official translation of Law n. 678/2001): Article 12 (1) Whoever recruits, transports, transfers, harbours or receives a person, through the use of threats or violence or the use of other forms of coercion, through kidnapping, fraud or misrepresentation, abuse of power or by taking advantage of that person's inability to defend him-/herself or to express his/her will or by giving or receiving money or other benefits in order to obtain the agreement of a person who has control over another person with the intent of exploiting the latter, commits a criminal violation of this Law and shall be punished with 3 to 12 years imprisonment and denial of a number of rights. (2) Whoever engages in trafficking in human beings under the following circumstances: a) traffics two or more persons at the same time; b) causes the victim to sustain serious bodily harm or serious health problems, shall be punished with 5 to 15 years imprisonment and denial of a number of rights. (3) If the violation in this Article has resulted in the victim's death or suicide, the offender shall be punished by 15 to 25 years imprisonment and denial of a number of rights.

Article 13 (1) Whoever recruits, transports, transfers, harbours or receives a person aged between 15 and 18, with the intent of exploiting that person, commits the crime of trafficking in underage persons and shall be punished by 3 to 12 years imprisonment and denial of a number of rights. (2) If the violation within paragraph (1) was committed against a person aged less than 15, the punishment shall be 5 to 15 years imprisonment and denial of a number of rights. (3) If the violations within paragraphs (1) and (2) are committed with the use of threats or violence or of other forms of coercion, through kidnapping, fraud or misrepresentation, abuse of power or by taking advantage of that person's inability to defend him-/herself or to express his/her will or by giving or receiving money or other benefits in order to obtain the agreement of a person who has control over another person, the offender shall be punished with 5 to 15 years imprisonment and denial of a number of rights in the case of paragraph (1) and 7 to 18 years imprisonment and denial of a number of rights in the case of paragraph (2). (4) For the violations within paragraphs (1), (2) and (3) that have been committed in the conditions of Art. 12 paragraph (2) punishment shall be 5 to 15 years imprisonment and denial of a number of rights in the case of paragraph (1), 5 to 17 years imprisonment and denial of a number of rights in the case of paragraph (2) and 5 to 18 years imprisonment and denial of a number of rights in the case of paragraph (3), thesis 1 and 7 to 20 years imprisonment and denial of a number of rights in the case of paragraph (3), thesis 2.

⁴⁶⁹ Definition of money laundering (official translation of Law n. 656/2002): Article 23 (1) It constitutes a money laundering crime punished with imprisonment from 3 to 12 years: a) the exchange or transfer of values, knowing that they result from the perpetration of an offence, in order to hide or dissimulate the illicit origin of that values or in order to help the perpetrator of the offence that generated the values to escape from pursuit, judgement or execution of the punishment. b) hiding or disguising the real nature of the origin, situation, disposition, movement of the values or of the rights related to those values, knowing that the values result from the perpetration of a criminal offence c) obtaining, holding, or using of goods, knowing that they result from the perpetration of a criminal offence. (2) Associating or initiation of an association, adhesion or supporting, in any way of such a kind of association, in order to commit money laundering offences is punished with imprisonment between 5 and 15 years. (3) The attempt is also punishable.

⁴⁷⁰ Definition of association in order to commit crimes according to art. 323 CC (official translation): (1) The deed of associating or of initiating the establishment of an association with the purpose of committing one or more crimes, other than those shown in art. 167, or adhering or supporting in any way such an association is punished by 3 to 15 years in jail, without exceeding the punishment stipulated by the law for the crime related to the purpose of the association. (2) If the association was followed by perpetration of another crime, the perpetrators of that crime are punished by the corresponding punishment for that crime, in contest with the punishment stipulated in paragraph 1. (3) The persons stipulated in art. 1, who inform the authorities on the association before it is discovered and the crime related to the purpose of the association occurs, are not punished. This definition, which is rather outdated with respect to the Palermo

this regard filling up the gaps of the previous definition (e.g. Article 7 of Law n. 39/2003). Furthermore, art. 354 of the new Criminal Code, which was adopted on 28.06.2004, will enter into force in June 2005.

However, there are no provisions regarding liability of legal persons, which cannot be held responsible for corruption offences and resulting money laundering. The new criminal code, which was adopted on 28.06.2004, contains provisions on this matter (art. 45 and 59), but they will not enter into force until 29.06.2005. At the moment the only applicable provisions are those of Law n. 299/2004 on criminal liability of legal entities for forgery.

In reference to the more recent criminal definitions mentioned above, the process of harmonization is underway and good results have been achieved at least in regards to trafficking of human beings. Law n. 678/2001 on Prevention and Combating of Trafficking in Human Beings has been considered to stipulate 'a comprehensive and effective regulation' on the issue and the substantive penal provisions 'fully meet the legal standards established in the UN Trafficking Protocol'.⁴⁷¹

On the contrary, not all the suggestions elaborated in the 2000 report by the group of experts of the COE were observed in the reformulation of the definition of money laundering with Law n. 656/2002.⁴⁷² In particular, the definition still requires a high standard of proof of the mental element, 'knowledge', or 'intent', which could raise

convention, is going to be replaced by a new art. 323 currently included in the Bill of the new Criminal Code: The deed of associating or of initiating by at least 3 persons, the establishment of an association with the purpose of committing one or more crimes, other than those shown in article 167, or initiating such an association is punished by 3 to 15 years in jail. Adhering or supporting in any way such an association settled under the conditions stipulated in paragraph 1, is punished by 2 to 12 years in jail. The penalty applied by the instance for one of the crimes settled in paragraph 1 and 2, cannot exceed the penalty stipulated by the law for the offence for which purpose the association was made. For the crimes settled in paragraphs 1 and 2, the special maximum of the penalty increases with 3 years, if they were committed by public authorities, or public workers. The persons mentioned in paragraph 1, 2 and 4 who inform the authorities on the association before it is discovered and the crime related to the purpose of the association occurs, are not punished.

There are however some special provisions regarding criminal association. Article 7 of Law n. 39/2003: (1) The initiation or constitution of an organized criminal group, or joining or supporting in any way such a group, shall be punished by prison from 5 to 20 years and the interdiction of certain rights. (2) The punishment for the deeds stipulated in paragraph (1) may not be bigger than the sanction provided by the law for the most grave offence within the purpose of the organized criminal group. (3) If the deeds stipulated in paragraph (1) have been followed by a grave offence, the rules pertaining the concurrence of several offences in one action shall be applied. Article 14 of Law n.678/2002: Whoever commits the violations within Articles 12 and 13 as a member of an organized group or has obtained or produced, for him/herself or for others, significant material proceeds out of the commission of those violations shall receive 3 additional years to the maximum specific term of imprisonment. Article 23 (2) of Law n. 656/2002: Association or initiation of an association, adhesion or supporting, in any way of such of association in order to commit money laundering is punished with prison between 5 and 15 years.

⁴⁷¹ M. G. Giammarinaro, *Opinion and Commentary on the Legal Provisions on Trafficking in Human Beings Applicable in Romania*, LARA Project – Criminal Law Reform Against Trafficking in Human Beings, March 2003, p.3, available at the Council of Europe website (last verified on 18 February 2004).

⁴⁷² Council of Europe, Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV), *First evaluation report on Romania. Summary*, Strasbourg, 11 February 2000. The report is available at the Council of Europe website, <http://www.coe.int> (last verified on 18 February 2004).

problems in international assistance from Romania. In fact, requests from foreign states cannot be based on the 'should have known' or negligence standard, and the higher standard requested by Romanian legislation is not easy to achieve during the preliminary stages of investigations.⁴⁷³

2.2. CRIMINAL PROCEDURE

The criminal procedure code contains general and special provisions concerning search, forfeiture, confiscation that have been recently considered to be consistent with the objective of a successful prosecution against organized crime cases (art. 164–165 CCP).⁴⁷⁴ In addition, art. 25 of Law n. 21/99 on money laundering appears to provide a mandatory confiscation regime, which is both property and value based; however it has been criticized because the evidentiary burden which the prosecutor has to discharge is very high.⁴⁷⁵ The general regime for confiscation is characterized by an all crime approach. However, conviction is always a prerequisite for confiscation provisions to apply, and the 'reversal of the burden of proof', placing the onus on the defendant to show the legal origin of his/her assets, is not allowed. These two aspects have been partially addressed by law n. 39/2003 (art. 13)⁴⁷⁶ and should be tackled in the future with the introduction of a new criminal code (ar. 136).

Law n. 682/2002 on Witness Protection has been recently introduced into the Romanian legislation (19 December 2002). Witnesses of certain crimes, including trafficking in human beings and other crimes commonly linked with organized crime, who has to actively cooperate with the law enforcement agencies are eligible for protection under this law.⁴⁷⁷ Another important feature of the witness protection provisions is the possibility of using communications technology, such as video links, to protect the safety of the witness as well as close relatives.

Special means of investigation for organized crime such as interception of telephone conversations, undercover operations, and covert methods like controlled delivery are commonly used. Undercover operations in cases of trafficking are specifically provided for in art. 22 of the Law n. 678/2001. The new Law n. 218/2002 on the Police and the new Law no.39/2003 on the prevention and sanctioning the organized crime have set down general rules for undercover operations in cases related to organized crime, money laundering, trafficking,

⁴⁷³ Council of Europe, Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV), *Second round evaluation report on Romania. Summary*, Strasbourg, 4 July 2003. The report is available at the Council of Europe website, <http://www.coe.int> (last verified on 22 May 2004).

⁴⁷⁴ See also M. G. Giammarinaro, *Opinion and Commentary on the Legal Provisions on Trafficking in Human Beings Applicable in Romania*, cit., p. 4.

⁴⁷⁵ Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV), *Second Round Evaluation Report on Romania. Summary*, cit.

⁴⁷⁶ Chapter IV of Law n. 39/2004 expanded the list of goods subject to confiscation and the financial investigative tools available to agencies for prosecution.

⁴⁷⁷ For victims of trafficking, the requirements of the Law n. 682/02 on Witness Protection have been considered to be too high as he or she sometimes only knows the final exploiters. M. G. Giammarinaro, *Opinion and Commentary on the Legal Provisions on Trafficking in Human Beings Applicable in Romania*, cit., p. 3.

terrorism and other serious crimes. According to the provisions of Section V of the Criminal Procedure Code and, in particular, article 91 CCP introduced by Law n.281/2003, the conditions for video audio or other type of communication interception have been modified, making them possible under certain circumstances.

2.3. DATA PROTECTION RULES

The legislative framework for data protection is articulated in three different instruments: Law n. 182/2002 regarding the protection of classified data, Law n. 677/2001 regarding personal data protection, and GD 585/2002 regarding national standards for classified data. All these provisions apply to prosecution offices and law enforcement agencies with the only exceptions made are related to issues of national security and public order. Law enforcement agencies and prosecution offices are not allowed to transfer personal data to other countries that are not party to the 1981 Convention. They are duty-bound to apply both technical and organisational security measures to the data collected, which is designed to ensure a level of security consistent with European standards. The individual judges and prosecutors are ultimately responsible for the application of data protection provisions during the investigations, while the application of data protection rules is generally guaranteed by a supervisory authority called 'Avocatul Poporului' (People's Advocate). This is an independent body and has the power of investigation. Additionally, it brings violations to the attention of competent judicial authorities and starts legal proceedings.

Besides the national framework, Romania ratified the 1981 COE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and has also concluded bilateral agreements within the framework of police and judicial assistance including specific provisions on data protection with all SEE countries. No agreement of such a type has been concluded with EU member states. However, a cooperation agreement with Europol has recently been signed (25.11.2003) and is should have been ratified in June 2004.

2.4. MULTILATERAL AND BILATERAL AGREEMENTS

a) Legislation

Romania signed and ratified several international and European instruments for judicial and police cooperation between 1997 and 2000: the European Convention on Extradition (1957 COE – ETS 024), the First additional Protocol to the European Convention on Extradition (1975 COE – ETS 086), the Second additional Protocol to the European Convention on Extradition (1975 COE – ETS 098), and the European Convention on Mutual Assistance in Criminal Matters (1959 COE – ETS 030) and its First Protocol.

In addition, Romanian police officers and prosecutors may make use of the international cooperation provisions provided for in the following specific instruments against organised crime: the United Nations Convention against Illicit Traffic of Drugs and Psychotropic Substances (1988), the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990, COE – ETS 141) and the Criminal Law Convention against Corruption (1999 COE – ETS 173).

Romania also entered into bilateral and multilateral agreements regulating international judicial assistance with all SEE and EU countries.

Besides this international framework, Romanian prosecutors are obliged to respond to foreign assistance requests according to the provisions of the Code of Criminal Procedure of 1968, if the dual criminality requirement is fulfilled. In particular, art. 132 and 135 CCP stipulate that 'the criminal investigation body or the law court has the duty to respond to foreign assistance requests'.

b) Practices

All the above-mentioned international instruments are often used in practice. However, the bilateral agreements are rarely or averagely used, with the only exceptions being those agreements with France, Germany, Italy and Spain, which are often used.

2.5. DIRECT CHANNELS OF POLICE AND JUDICIAL COOPERATION

a) Legislation

Direct judicial cooperation between Romanian prosecutors and investigating judges with those of other EU countries has been in place since the entry into force of the European Convention on Mutual Legal Assistance in Criminal Matters (December 2000) and is also favoured by formal agreements with Eurojust and EJM (see *infra*).

Formal direct police cooperation is in place with SEE countries (Bulgaria, Czech Republic, Hungary, Moldova, Poland and Turkey) and with the following EU member states: Austria, France, Germany, Greece, Ireland, Italy, The Netherlands, Portugal, Spain, and the United Kingdom.

By law Romanian prosecutors, when directly contacted by colleagues of another country asking for assistance, must forward the request for assistance to their competent colleagues if they are unable to implement the request themselves. Other pieces of information or evidence that may be gathered by a foreign prosecutor investigating in Romania are bank records and criminal records, which Romanian counterparts are obliged to transfer to their colleagues if requested.

Romanian prosecutors have no obligation to fulfil other forms of direct cooperation or exchange of information. They are not obliged to summon the witnesses or the experts, whose testimony may be requested by colleagues of a foreign country, nor do they have to provide assistance regarding the special and ordinary means of investigation. Additionally they are not required to execute search warrants or freezing/confiscation orders.

With regard to direct police cooperation and exchange of information, Romanian police officers are also obliged by law to forward the requests for assistance to competent colleagues if they do not have the appropriate jurisdiction. Moreover, when police gather information on a transnational organised crime ring that could be useful to develop an investigation in another country, they are legally obliged to forward that information to the authorities of the other country. Romanian police can send copies of phone records, documents related to auto vehicle ownership and documents related to criminal records, but not bank records. Finally, when foreign police officers start a shadowing operation in their home country they can be

authorised to continue it within the borders of Romania in cooperation with Romanian police.

b) Practices

Romanian prosecutors and investigating judges enter into direct contact with prosecutors and investigating judges of other EU countries, whether a formal agreement for direct judicial cooperation exists or not.

Romanian police officers are informed of the possibility of being able to cooperate with police officers of other countries when an agreement is in place; however, they also enter into direct contact with police officers of other countries when formal agreements are not in place.

Police and judicial direct contacts are also enhanced through the following channels:

- Romanian liaison magistrates who are currently posted only in Belgium (since May 2003) to carry out important activities (provision of direct links with foreign colleagues, direct help in the exchange of information and statistics, help to enhance the mutual understanding of judicial systems, individual core work);
- Romanian liaison police officers who are currently present in Austria and Italy and provide direct links with foreign colleagues and direct help in the exchange of information and statistics;
- Romanian Home Affairs attachés who are currently present in France, Greece, Spain, Italy, Germany, Austria, Czech Republic, UK, Holland, Poland, Bulgaria, Hungary and Europol, and provide direct links with foreign colleagues and direct help in the exchange of information and statistics;⁴⁷⁸
- joint investigation teams, which are established with Bulgaria, Croatia, Czech Republic, Hungary, Moldova, Turkey, Austria, Belgium, France, Germany, and Spain;⁴⁷⁹
- international joint customs surveillance operations, which are established with Bulgaria, Bosnia and Herzegovina, Croatia, FYRoM, Hungary, Turkey and Greece.

⁴⁷⁸ Since 2002, when the first liaison police officers started to work abroad, 1432 assistance requests have been sent by them, through the Romanian National Focal Point, to obtain the support of Romanian judicial authorities in solving cases, 1255 of them were concluded. At the same time, 1151 assistance requests were initiated by Romanian law enforcement agencies, through the Romanian National Focal Point, addressed to Romanian liaison police officers, to obtain data from foreign judicial authorities, 908 have been concluded. The main criminal fields that the assistance requests referred to were: drug trafficking, person identification, criminal records, fingerprints, forged documents, stolen vehicle trafficking, gang robberies, illegal migration, prostitution and trafficking of human beings. In 2003, GDCOCA received and answered 819 assistance requests from the SECI Center (222) and liaison officers in place in Romania (597). In addition to this, GDCOCA has dealt with 2122 operational requests from abroad and international rogatory commissions. In the same period, there have been 148 meetings with liaison officers in place in our country.

⁴⁷⁹ Law n. 161/2003 establishes powers and competence for joint investigative teams with the participation of prosecutors. Special teams also include OLAF members.

All these channels of direct cooperation and exchange of information are deemed as 'highly useful' in the fight against organized crime, because in the experience of the expert interviewed they allow 'a fruitful exchange of experiences on both sides, fast adaptation on dynamics of organized crime phenomenon, efficiency in solving difficult cases, fast forwarding for investigations on transborder organized cases'.

However, the practical possibilities for direct cooperation between Romanian prosecutors and police officers and their foreign counterparts may be impaired by the following factors:

- lack of computer equipments (computer network and official e-mail account do not exist);
- lack of training in investigating transnational organised crime.

According to the Romanian General Directorate for Combating Organised Crime, since 2001 these problems have been tackled, at least with regards to police officers investigating OC cases, by organising a vast range of training activities.⁴⁸⁰ Thus, the level of police officer training in investigating transnational organised crime has been raised from low (opinion of the expert in 2002) to high (opinion of the Romanian General Directorate for Combating Organised Crime experts in early 2004).

The same improvements have also been indicated regarding the problem of the technological means available to Romanian police officers. Official email addresses already exist for almost all structures within the Ministry of Administration and Interior and computer networks are operational in more than the half country.

No language problems are indicated, as there are translators readily available, who can translate the official documents coming from a foreign country in answer to an assistance request.

2.6. INTERNATIONAL AND REGIONAL ORGANISATIONS

a) Legislation

Interpol is the normal instrument used by Romanian police officers for identifying the competent counterparts in foreign countries. The Romanian Interpol National Bureau provides the police from foreign countries with the following, if requested:

- information regarding investigations of crimes committed in Romania;
- information on investigations aimed at tracing goods located in Romania, which are related to a crimes committed abroad;
- information regarding Romanian criminal records;
- information related to the ownership of auto vehicles and regarding driving licenses issued in Romania;

⁴⁸⁰ According to GDCOC, during 2001–2003 there were 32 training activities in Romania (293 participants, 1193 total days of training) and 127 abroad (228 participants, 1564 days of training).

- information regarding the ownership of Romanian phone numbers.

Romania is a party of the SECI Center.

A cooperation agreement has recently been signed between Europol and Romania (on 25.11.2003).⁴⁸¹

With regard to judicial cooperation, Romania has concluded agreements with Eurojust and the EJM.

b) Practices

According to the experience of our experts, the degree of cooperation between Romania and the international/European organisations relevant for police cooperation is still not high in some areas. At the moment Europol has just signed an agreement of cooperation with Romania and thus it has not been possible to assess its level of cooperation in the different areas, but only to achieve a global evaluation, which is very good. Judicial cooperation as envisaged by Eurojust and the EJM appears to contribute in a variety of ways to the fight against organised crime in Romania by cooperating and exchanging information. The following tables illustrate the level of cooperation (where 0=no cooperation, 1=low level of cooperation, 2=medium level of cooperation and 3=high level of cooperation) in the different areas in which they operate. This evaluation is based on the personal judgement of the experts interviewed.

⁴⁸¹ 'Cooperation Agreement between Romania and Europol', in *Press Release*, 16 May 2003, available at <http://home.tiscali.nl/romanianembassy/romeuropol.htm> (last verified on 7 April 2004).

TABLE 12. DEGREE OF COOPERATION BETWEEN ROMANIA AND INTERPOL

Exchange of strategic and operational information	1
Exchange of financial information on suspected corporate entities	1
Provision of direct contacts with local law enforcement authorities	2
Provision of direct contacts with local prosecution offices	2
Exchange of information on investigative procedures and crime prevention methods	2
Training initiatives	1
Advice and support in individual investigations	2
Exchange of liaison officers	1
Participation in joint investigative teams in a support capacity	2
Participation in joint investigative teams in an operative capacity	2

TABLE 13. DEGREE OF COOPERATION BETWEEN ROMANIA AND EUROJUST

Legal advice and assistance in cross-border cases	3
Inputs to national authorities to take steps and initiate investigations	2
Direct help in the letters of rogatory	2
Provision of direct contacts with local law enforcement authorities	2
Provision of direct contacts with local prosecution offices	3
Exchange of information on investigative procedures and crime prevention methods	3
Advice and support in individual investigations	2

TABLE 14. DEGREE OF COOPERATION BETWEEN ROMANIA AND EJM

Provision of legal and practical information on mutual legal assistance	3
Provision of direct contacts with local law enforcement authorities	3
Provision of direct contacts with local prosecution offices	3
Exchange of information on investigative procedures and crime prevention methods	3
Training initiatives	3
Advice and support in individual investigations	2

3. GOOD PRACTICES

3.1. STRUCTURES SET UP FOR INTERNATIONAL COOPERATION PURPOSES

Both police officers and prosecutors normally have to channel their requests for assistance through central authorities, which are the Ministry of Interior for police cooperation and the Ministry of Justice and Prosecutor General's Office for judicial cooperation. The Ministry of Justice and Prosecutor General's Office also have a department uniquely devoted to international cooperation.

The central authorities mentioned above have translators readily available for the following languages: English, French and German. The requests for assistance are sent by mail, fax and e-mail. A national standard form exists which is used by prosecutors and investigating judges to ask for international assistance.

It takes up to 2 weeks to get an answer to a request for assistance made to a foreign country.

3.2. DATABASES ON ORGANISED CRIME

No common criminal databases have been established to share OC information collected in Romania with foreign counterpart colleagues.

Furthermore, although there are two national centralised databases, which contain information about persons wanted/convicted for participating in OC groups, foreign police officers cannot directly access the information contained in them.

3.3. MODI OPERANDI/METHODS IN THE INTERNATIONAL COOPERATION PROCESS

Romania has enacted the following *modi operandi*/methods in order to speed up the international cooperation process:

- acknowledgement of all requests and written enquiries concerning the execution of requests;
- providing the requesting authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing the request;
- setting priority to requests which have clearly been marked 'urgent` by the requesting authority;
- giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authority how the difficulty might be overcome;
- stating when the assistance requested is likely to be provided;
- explaining the reasons for the urgency or deadline;
- ensuring that requests are submitted in compliance with the relevant treaty or other international arrangements;

- providing the requested authorities with the name and contact details, including telephone and fax numbers, of the authority and, if possible, the person responsible for issuing the request;
- compliance with the formalities and procedures expressly indicated by the requesting member state;
- direct sending of procedural documents;
- spontaneous exchange of information;
- joint operational meetings;
- interagency coordination protocols.

4. EMERGING OBSTACLES

The analysis of legislation, practices and good practices relevant for international cooperation against organized crime has highlighted some shortcomings that are reported here for the sake of clarity, as they represent the background and rationale for the recommendations included in paragraph 5.

4.1. OBSTACLES IN LEGISLATION

1. The lack of provisions on liability of legal persons

One of the most evident gaps in the legal framework against organised crime in Romania is the lack of provisions related to liability of legal persons involved in criminal activities.⁴⁸² This legal shortcoming is even more serious in the view of the high level of infiltration of organised criminals in legitimate activities and the exploitation of these covers to carry out criminal acts (e.g. use of real estate sector, nightlife services and so on to launder money).

2. The high standard of proof for the money laundering offence

The definition of money laundering contained in art. 23 of law 656/2002 requires a high standard of proof of the mental element, 'knowledge', or 'intent', which could raise problems in international assistance from Romania. In fact, requests from foreign states cannot be based on the 'should have known' or negligence standard, and the higher standard requested by Romanian legislation is not easy to achieve during the preliminary stages of investigations.

3. The problems in the confiscation regime

The Romanian confiscation regime is mandatory, both property and value based, and characterised by an all-crime approach. However, it is not possible to put the *onus probandi* on the defendant in order to show the legal origin of his/her assets, but it is always up to the prosecutor to prove this. Furthermore, conviction is always a prerequisite for confiscation to apply thus making it impossible to confiscate in the early stages of the proceedings.

4. The gaps in the special means of investigation apparatus against OC

Despite the recent empowering of law enforcement agencies to use special means of investigations (see art. 91 sec. 1 and 6 introduced by Law 281/2003), Romanian legislation does not allow the use of storefronts by investigative units. This tool is particularly useful during OC investigations and this gap could thus represent an obstacle in international investigations, because the use of storefront units can only be successfully achieved with the help of local authorities.

⁴⁸² Art. 45 and 59 of the draft criminal code do refer to liability of legal persons, but the new code will not enter into force until June 2005. At the moment the only applicable provisions on liability of legal persons are those of Law 299/2004, which are limited to a specific offence (forgery).

5. The missing bilateral agreements with Serbia and Montenegro

Romania did not conclude bilateral agreements for direct police cooperation with Serbia and Montenegro. Although the multilateral agreements signed by Romania covers most of the issues related to judicial and police cooperation, bilateral agreements are a useful additional tool, because of the higher level of specificity that is possible to achieve in these kinds of documents (e.g. with regards to criminal definitions, structures involved, etc.).

6) The lack of instruments to directly exchange data in the police and cooperation process

Romanian police officers do not have the legal possibility to directly send bank records if requested by a foreign counterpart. They can only provide this act of assistance with a rogatory letter, following an order issued by the prosecutor.

7) The scarcity of instruments for the judicial cooperation process

In Romania there are no direct legal obligations for prosecutors/investigative judges to summon witnesses and experts, to execute search warrants, ordinary and special means of investigations or freezing and confiscation orders for foreign colleagues.

4.2. OBSTACLES IN PRACTICES

8) The inadequacy in the technological apparatus available to all prosecutors/police officers investigating TOC cases

Even if progress has been made in this respect (especially for specialised police agencies), computer networks (intranets) and an official e-mail accounts are not available to all Romanian prosecutors and police officers investigating TOC cases.

9) The low level of cooperation between Interpol and Romanian authorities in some strategic fields

Even if the evaluation of cooperation with Interpol has improved in many fields, at an operative level the degree of cooperation is still rated low in the following fields:

- exchange of strategic and operational information,
- exchange of financial information on suspected corporate entities,
- training initiatives, and
- exchange of liaison officers.

4.3. OBSTACLES IN GOOD PRACTICES

10) The absence of common criminal databases and the difficulties in accessing national ones

No common criminal database has yet been established in Romania on OC. Although there are two national centralised databases, which contain information about persons wanted/convicted for participating in organised criminal groups, a

foreign police officer cannot directly access the information contained in the database.

The absence of such instruments impedes a rapid exchange of information with foreign colleagues on people wanted/convicted for participating in OC groups.

4.4. OTHER OBSTACLES MENTIONED BY THE EXPERTS

11) Obstacles to investigating organised crime

The experts interviewed mentioned the following as the most significant obstacles to investigating organised criminal groups:

- limited investigative powers;
- lack of a multidisciplinary approach, i.e. of cooperation between officers with different skills in the development of OC investigations;
- lack of human resources within the offices participating in organised crime investigations;
- high turnover of specialised personnel participating in OC investigations.

12) Obstacles to police assistance

The experts interviewed mentioned the following as the most significant obstacles to *police assistance* received by Romania from other countries in pre-trial investigations into transnational organised crime:

- delay of response to requests for assistance;
- lack of harmonisation in legislation;
- difficulty in identifying the foreign counterpart to whom the request for assistance must be addressed.

13) Obstacles to judicial assistance

The experts interviewed mentioned the following as the most significant obstacles to *judicial assistance* received by Romania from other countries in pre-trial investigations into transnational organised crime:

- delay of response to requests for assistance;
- lack of harmonisation in legislation;
- lack of human resources;
- lack of financial resources;
- lack of training.

4. RECOMMENDATIONS

4.1. LEGISLATIVE RECOMMENDATIONS

Recommendation n. 1

'Establishing liability of legal persons for OC activities'

Background and rationale

One of the most evident gaps in the legal framework against organised crime in Romania is the lack of provisions related to liability of legal persons involved in criminal activities.⁴⁸³ This legal shortcoming is even more serious in the view of the high level of infiltration of organised criminals in legitimate activities and the exploitation of these covers to carry out criminal deeds (e.g. use of casinos, real estate sector and so on to launder money).

Recommendation

Action should be taken to enact provisions dealing with the responsibility of legal persons.

Implementing measures

- Romanian legislators should adopt the provisions of the new draft criminal code on liability of legal persons engaging in organised crime activities.
- Alternatively, a form of administrative liability for legal persons should be sought in order to make legal persons accountable for their participation in organised crime activities.

⁴⁸³ Art. 45 and 59 of the draft criminal code do refer to liability of legal persons, but the new code will not enter into force until June 2005. At the moment the only applicable provisions on liability of legal persons are those of Law 299/2004, which are limited to a specific offence (forgery).

Recommendation n. 2

'Refining the criminal definition of money laundering'

Background and rationale

The definition of money laundering contained in art. 23 of law 656/2002 requires a high standard of proof of the mental element, 'knowledge', or 'intent', which could raise problems in international assistance from Romania. In fact, requests from foreign states cannot be based on the 'should have known' or negligence standard, and the higher standard requested by Romanian legislation is not easy to achieve during the preliminary stages of investigations.

Recommendation

Action should be taken to refine the criminal definition of money laundering.

Implementing measures

- Art. 23 of law 656/2002 should be refined in order to lower the threshold of the subjective element of the offence of money laundering to the 'should have known' or negligence standard;
- Alternatively, the criminal definition could remain the same, but specific provisions should be enacted to allow international assistance requests based on lower standards of proof of the subjective element.

Recommendation n. 3

'Improving the confiscation regime'

Background and rationale

The Romanian confiscation regime is mandatory, both property and value based, and characterised by an all-crime approach. However, it is not possible to put the *onus probandi* on the defendant in order to show the legal origin of his/her assets, but it is always up to the prosecutor to prove this. Furthermore, conviction is always a prerequisite for confiscation to apply thus making it impossible to confiscate in the early stages of the proceedings.

Recommendation

Action should be taken to improve the confiscation regime.

Implementing measures

Romanian legislators should enact appropriate legislation easing the burden of proof of the prosecutors and allowing early intervention on criminal assets. The new criminal code, due to enter into force on 29 June 2005, could be exploited to address the above mentioned weaknesses in the general framework of confiscation.

Recommendation n. 4

'Enhancing investigative powers in TOC cases'

Background and rationale

Despite the recent empowering of law enforcement agencies to use special means of investigations (see art. 91 sec. 1 and 6 introduced by Law 281/2003), Romanian legislation does not allow the use of storefronts by investigative units. This tool is particularly useful during OC investigations and this gap could thus represent an obstacle in international investigations, because the use of storefront units can only be successfully achieved with the help of local authorities.

Recommendation

Action should be taken to enhance investigative powers in TOC cases.

Implementing measures

Romanian legislators should enact appropriate legislation allowing the use of storefronts by investigative units in TOC cases.

Recommendation n. 5

'Concluding bilateral treaties for direct police cooperation with all neighbouring countries'

Background and rationale

Romania has not concluded bilateral agreements for direct police cooperation with Serbia and Montenegro.

Although the multilateral agreements signed by Romania covers most of the issues related to judicial and police cooperation, bilateral agreements are an useful additional tool, because of the higher level of specificity that is possible to achieve in these kinds of documents (e.g. with regards to criminal definitions, structures involved, etc.).

Recommendation

Action should be taken to conclude bilateral treaties for direct police cooperation with all neighbouring countries.

Implementing measures

- Romania should conclude a bilateral agreement for direct police cooperation with Serbia and Montenegro.
- A high level of operative police cooperation with Serbia and Montenegro could also be achieved by making full use of the SECI Center facilities.

Recommendation n. 6

'Enhancing direct channels of police exchange of information'

Background and rationale

Romanian police officers do not have the legal possibility to *directly* send bank records if requested by a foreign counterpart. They can only provide this act of assistance with a rogatory letter, following an order issued by the prosecutor.

Recommendation

Action should be taken to expand the direct police cooperation and exchange of data by Romanian police officers.

Implementing measures

Direct police cooperation should be promoted by making it legally possible for police officers to directly send bank records if requested by a foreign counterpart.

Recommendation n. 7

'Enhancing direct judicial cooperation'

Background and rationale

In Romania there are no direct legal obligations for prosecutors/investigative judges to summon witnesses and experts, to execute search warrants, ordinary and special means of investigations and freezing and confiscation orders for foreign colleagues.

Recommendation

Action should be taken to expand direct judicial cooperation by Romanian prosecutors/investigating judges.

Implementing measures

Romanian prosecutors should be given the legal possibilities and the material means (e.g. by forming a dedicated department) to summon witnesses and experts, to execute search warrants, ordinary and special means of investigations and freezing and confiscation orders for foreign colleagues.

5.2. RECOMMENDATIONS ON PRACTICES

Recommendation n. 8

'Improving technological equipment available to police officers/prosecutors'

Background and rationale

Even if progress has been made in this respect (especially for specialised police agencies), computer networks (intranets) and an official e-mail accounts are not available to all Romanian prosecutors and police officers investigating TOC cases.

Recommendation

Action should be taken to increase the technological equipment available to police officers and prosecutors/judges investigating TOC cases.

Implementing measures

All prosecutors/investigating judges investigating TOC cases should be granted by their Agency a computer network and an official e-mail account.⁴⁸⁴

Recommendation n. 9

'Improving operative cooperation with Interpol'

Background and rationale

Even if the evaluation of cooperation with Interpol has improved in many fields, at an operative level the degree of cooperation is still rated low in the following fields:

- exchange of strategic and operational information,
- exchange of financial information on suspected corporate entities,
- training initiatives, and
- exchange of liaison officers.

Recommendation

Action should be taken to improve operative cooperation with Interpol in some strategic fields.

Implementing measures

Interpol and Romanian law enforcement authorities should consider establishing protocols in the fields of cooperation mentioned above in order to smooth the exchange of information.

⁴⁸⁴ Regarding the police officers investigating TOC cases this measure was implemented recently.

5.3. RECOMMENDATIONS ON GOOD PRACTICES

Recommendation n. 10

'Establishing common criminal databases'

Background and rationale

No *common* criminal database has yet been established in Romania on OC. Although there are two national centralised databases, which contain information about persons wanted/convicted for participating in organised criminal groups, a foreign police officer cannot directly access the information contained in the database.

The absence of such instruments impedes a rapid exchange of information with foreign colleagues on people wanted/convicted for participating in OC groups.

Recommendation

Action should be taken to establish common criminal databases

Implementing measures

The existing national centralised databases, which contain information about persons wanted/convicted for participating in organised criminal groups, should be made accessible on-line to foreign police officers and prosecutors, provided that guarantees for data protection are respected. This would allow a faster data exchange on TOC.

8.9.

SERBIA AND MONTENEGRO⁴⁸⁵

INTRODUCTION

The Federal Republic of Yugoslavia (FRY) was formed on 27 April 1992 as a self-proclaimed successor to the Socialist Federal Republic of Yugoslavia (SFRY). On 4 February 2003, the state of Serbia and the state of Montenegro proclaimed a new Constitution and changed the denomination of the country to 'State Union of Serbia and Montenegro' (short denomination 'Serbia and Montenegro'), which also contains two autonomous provinces (Vojvodina and Kosovo). Serbia and Montenegro has been a UN member since 01.11.2000 and a COE member since 3.4.2003.

The new Constitutional Charter established that the power to legislate on criminal policy and procedure belongs to each Member State. Therefore, both States are due to enact new criminal and criminal procedure codes.⁴⁸⁶

To further complicate the picture, in April 2004 a new Criminal Law and Law on Criminal Proceedings entered into force in Kosovo, which is a Serbian province under the interim administration of United Nations Mission in Kosovo (UNMIK).⁴⁸⁷

The 1977 Federal Criminal Procedure Act, applicable in the Republic of Montenegro, is mainly characterised by elements belonging to the inquisitorial tradition. However, the criminal justice system of the Republic of Serbia has elements belonging to both the inquisitorial tradition (the investigating judge in the preliminary proceedings, absence of the necessity of repeating the deposition in front of the adjudicating judge) and to the accusatorial systems (oral proceedings cross-examination, alternative means of concluding a trial).

As regard to the law enforcement organisation, there is only one special investigative unit, which deals with organised crime cases or criminal activities typically related to organised crime, the Department for Combating Organised Crime, based in Belgrade (Serbia).

⁴⁸⁵ The present country report was based on the answers given by two experts (Mr. Ljubomir Prelic, Deputy, Public Prosecutor, Republic of Serbia, Belgrade; Mr. Miodrag Vukovic, Deputy Head, Department for Combating Organised Crime, Republic of Serbia, Belgrade) from the Republic of Serbia as well as on additional materials. It thus contains only partial information on the Republic of Montenegro and on the other provinces. Given the complexities of the governmental/legal/institutional picture (see Introduction) and the lack of experts representing the territories other than Serbia, this report must be considered only as a partial analysis of the status of police and judicial cooperation in Montenegro.

⁴⁸⁶ It should be acknowledged that the interpretation of constitutional provisions on criminal law competences is still unclear. Updated information on the criminal law and procedure legislation of Serbia and Montenegro is available at <http://www.legislationline.org> (last verified on 18 February 2004).

⁴⁸⁷ Speech of DSRSG/Pillar I Jean-Christian Cady in the Seminar 'On Combating Crime with the New Provisional Criminal Code' at the Kosovo Judicial Institute, in *UNMIK Press Release*, 5 April 2004, available at: <http://www.unmikonline.org/press/2004/pressr/pr1161.pdf> (last verified on 22 April 2004).

1. THE ORGANISED CRIME SITUATION

The geographic position of Serbia and Montenegro, which like the other Balkan countries lies at the crossroads between Europe and the Middle East, together with its recent political and economic situation makes it a very interesting hub for OC activities. The international community has subjected Serbia and Montenegro to economic sanctions and political isolation for many years. This situation has created an environment, which is hard to control and a law enforcement gap,⁴⁸⁸ which has made it very difficult to detect organised crime activities, especially in the excise goods market.⁴⁸⁹ Until several years ago, the scope of organised crime was not a priority concern in Serbia and Montenegro; it started being so in 2000. Transition and privatisation in the Federal Republic of Yugoslavia (FRY) have only just begun and for this reason the titles of assets have not yet been clearly defined. In the initial stages of privatisation the transactions related to the purchase of property were mainly dealt with by the Central Bank, but few controls existed to avoid privatisation being exploited by criminals to launder money.⁴⁹⁰

The threat posed by organised crime from Serbia and Montenegro is currently controversial. Some sources report that the number of Former Yugoslav OC groups is decreasing, while others describe them as dynamic in various criminal activities: drug trafficking, illegal immigration, trafficking in human beings, theft and property crime, especially international vehicle crime. In carrying out these activities they are reported to make frequent use of violence.⁴⁹¹

It should be stressed that the most comprehensive action against organised crime was conducted in Serbia following the assassination of the prime minister in the first half of 2003. Following this action the level of activities of organised criminal groups dramatically decreased and there were no more serious kidnappings for ransom, racketeering cases, or various forms of assassinations of well-known personalities or mafia bosses, which, prior to this action, occurred very frequently.

1.1 FEATURES OF THE ORGANISED CRIMINAL GROUPS

According to police sources,⁴⁹² more than 50 organised crime groups are present in Serbia and Montenegro with a membership of approximately 10 members each.

⁴⁸⁸ US Department of State, *International Narcotics Control Strategic Report*, 2002, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2001/rpt> (last verified on 22 April 2004).

⁴⁸⁹ Federal Ministry of Internal Affairs, *Report on the Federal Republic of Yugoslavia Policy Priorities on Crime Combating Strategies*, unpublished document, 2001.

⁴⁹⁰ At the beginning of privatization money laundering was not a crime. This conduct was criminalised on 27 September 2001. Interpol Office, 'Presentation of NCB Interpol Belgrade Representative', paper presented at the *Europol High Expert Meeting on East European Organised Crime*, 29 and 30 November 2001, The Hague.

⁴⁹¹ Europol, *2003 European Union Organised Crime Report*, Luxembourg, 2003, available on the Europol site at: <http://www.europol.eu.int/publications/EUOrganisedCrimeSitRep/2003/EUOrganisedCrimeSitRep2003.pdf> (last verified on 22 April 2004), p. 14–15.

⁴⁹² See also International Crisis Group, 'Serbian Reform Stalls Again', in *ICG Balkan Report*, n. 145, 17 July 2003, Belgrade/Brussels, p. 2, available at: http://www.crisisweb.org/library/documents/report_archive/A401049_17072003.pdf (last verified on 22 April 2004).

Although 10 members is the average for a criminal group, police sources state that groups exist that are formed by only three or four participants. While prosecutorial sources agree that the average number of members in criminal groups operating in the country is from 3 to 10, they report a smaller number of groups i.e. from 20 to 30.

According to the experts interviewed, it is not the number of organised criminal groups that decisively affects the OC situation in Serbia, but the level of danger coming from them. The level varies from group to group. It is estimated that nearly 90% of the most serious problems coming from organised crime is initiated by around 10% of the identified criminal groups in Serbia.

The groups are mainly organised in a horizontal manner. This means that there is no strict hierarchy in the groups and that 'middle level' members are not coordinated by a leader, but have a high degree of independence in their activities.

Organised groups are made up of nationals and non-nationals. Most of the non-national members come from Bosnia and Herzegovina and Croatia, which are both neighbouring countries of Serbia and Montenegro.

The criminal associations operate on both a national and transnational scale and cooperate with each other. They also cooperate with other criminal associations based abroad in countries such as Bulgaria, Bosnia and Herzegovina, Croatia, FYRoM, Romania, Turkey, Austria, Germany and Italy.

Albanians are said to maintain a large presence in the country and to play a very important role in drug trafficking throughout the country, particularly in heroin trafficking via Balkan Route.⁴⁹³

Organised criminal groups are said to have links with several Italian organisations and to cooperate with them for the purpose of trafficking drugs, arms and cigarettes.⁴⁹⁴

1.2. ACTIVITIES OF THE ORGANISED CRIMINAL GROUPS

Criminal activities related to **drug trafficking** have been increasing in Serbia and Montenegro.⁴⁹⁵ The country is an important point on the Balkan Route and it is utilised by heroin traffickers as a transit point for drugs along the Balkan routes from Western Asia heading mainly to Western Europe.⁴⁹⁶ Data on seizures indicate that cocaine is also trafficked through the country, while Serbian OC groups are

⁴⁹³ Ibidem.

⁴⁹⁴ European Committee on Crime Problems (CDCP), Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime, *Report on the Organised Crime Situation in Council of Europe Member States*, Council of Europe, Strasbourg, December 2000, p. 7, available at: http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/Organised_crime/Documents/Report1999E-2.pdf (last verified on 22 April 2004), p. 52.

⁴⁹⁵ European Committee on Crime Problems (CDCP), cit., p. 27.

⁴⁹⁶ U.S. Department of State, *International Narcotics Control Strategy 2003*, March 2004, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2003/> (last verified on 22 April 2004).

believed to be in communication with Colombian cartels.⁴⁹⁷ Drugs are mainly transported by road, but also by river and air (especially the less monitored, i.e. Podgorica and Belgrade).

The country is also a transit, origin and destination country for **trafficking of human beings**.⁴⁹⁸ Women from Serbia are trafficked to Italy, Greece, Cyprus, Germany and the Netherlands. They are also trafficked to FYRoM, but they rarely stay there for a long period, because the country is usually just a stop on their journey to Cyprus and Greece. As far as the recruitment of women from Serbia and Montenegro for prostitution purposes is concerned, organised criminals generally set up fake escort agencies that lure women with the promise of non-existent well-paid jobs abroad (mainly in Western Europe).⁴⁹⁹

The main role Serbia and Montenegro plays in human trafficking is that of a transit country. Serbia and Montenegro are in fact used by local and foreign traffickers as a gathering point for women and girls. 'Markets' are organised in the country, where victims are bought and sold by traffickers and are then trafficked to Europe through various routes. Women from Russia, Romania, Moldova, Bulgaria and Ukraine are trafficked to Italy and Austria on one route and to Bosnia, Macedonia and Albania on the other.⁵⁰⁰ Belgrade is a central city for this activity and Montenegro is the main transit region for trafficking to Italy by sea.⁵⁰¹ Some of these women are obliged to work in Serbia and Montenegro as prostitutes for a certain period of time and then they are sold to other traffickers, who frequently take them to Italy, passing through Montenegro. Some of these girls are also trafficked jointly with Serbian and Montenegro victims and are transferred to Greece through FYRoM, or to the Netherlands.

A controversial phenomenon is **trafficking in children**, because, while government sources⁵⁰² and some academic research⁵⁰³ indicate this as an alarming phenomenon, the experts interviewed deny it to be so, at least in Serbia. According to government data,⁵⁰⁴ Serbia and Montenegro plays an important role as transit country for child trafficking from Central and East European countries. After passing through Serbia, children are transported to Montenegro and Albanian coasts where they are shipped

⁴⁹⁷ United Nations, *Global Illicit Drug Trends 2003*, New York, 2003.

⁴⁹⁸ UNICEF/UNOHCHR/OSCE, *Trafficking in Human Beings in South Eastern Europe*, UNICEF, 2003, available at: http://www.osce.org/documents/odihr/2003/12/1645_en.pdf (last verified on 22 April 2004), p. 77.

⁴⁹⁹ Helsinki International Federation for Human Rights, 'A Form of Slavery: Trafficking in Women in OSCE Member States. Country Reports: Serbia', July 2000, available at: <http://www.greekhelsinki.gr/english/reports/ihf-wit-july-2000-serbia.html> (last verified on 22 April 2004).

⁵⁰⁰ U.S. Department of State, *Trafficking in Persons Report*, 2002, p. 22, available at: <http://www.state.gov/g/tip/rls/tiprpt/2002/10653.htm> (last verified on 22 April 2004), p. 109.

⁵⁰¹ Lehti M, *Trafficking in women and Children in Europe*, HEUNI Paper n. 18, Helsinki 2003, p. 23-24, available at: <http://www.heuni.fi/uploads/to30c6cjxyah11.pdf> (last verified on 22 April 2004).

⁵⁰² 74 cases of child trafficking were recorded only in 2002. See Zimonjic V. P., 'Serbia Spearheads Drive Against Child Trafficking', in *iAbolish*, 14 October 2003, available at: <http://www.iabolish.com/news/press-coverage/2003/ips10-14-03.htm> (last verified on 22 April 2004).

⁵⁰³ Helsinki International Federation for Human Rights, cit.

⁵⁰⁴ V. P. Zimonjic, cit.

to Italy and from there to other Western countries. Victims are mainly from the Gipsy population and are exploited for begging. According to other sources, organised criminal organisations systematically kidnap children in order to force them to beg and steal. In some cases the children are also sold for illegal international adoptions.

There are allegations that trafficking in human beings is not impeded and is sometimes even facilitated by corrupt border guards and police officers,⁵⁰⁵ who accept bribes from criminals and in exchange allow them get on with their trafficking activities.⁵⁰⁶ **Corruption** is in fact one of the most serious criminal phenomenon in Serbia and Montenegro especially because it facilitates organised crime activities of various types: from the classic white collar crimes (money laundering, extortion and embezzlement) to the more violent trafficking crimes.⁵⁰⁷ Corruption in Serbian and Montenegro is deemed to be endemic and even high-ranking officials in the political arena are well-known to be linked with organised crime.⁵⁰⁸

Criminal organisations are also active in the business of **arms trafficking**. Small arms and light weapons trafficking have been identified in the internal unresolved conflicts in Kosovo and Montenegro, and the external ones with Bosnia-Herzegovina and Macedonia, interrelated with the growth of organised crime.⁵⁰⁹ The groups that provided weapons during the Yugoslav conflict are those that are allegedly most involved in the business of arms trafficking. The same groups also deal with drug trafficking and money laundering. Some Serbian - Montenegrin groups provide arms and money laundering services to the Colombian Cartels, in return for cocaine.⁵¹⁰

Organised crime is present in important economic sectors and commit a variety of **economic crimes**, such as tax evasion and the smuggling of goods. The black market emerged in the country as a consequence of the war and the economic sanctions imposed on the country by the international community. At that time petrol and tobacco were among the products that were most illegally introduced into Serbia and Montenegro. It seems that those are still the goods that are mainly smuggled in the territory by organised crime. There is evidence that in order to commit such crimes, organised groups extensively use corruption to minimise the

⁵⁰⁵ Helsinki International Federation for Human Rights, *Anti-Trafficking Efforts Crippled by Corruption and Lack of Proper Official Response to Victims' Needs*, February 2002, available at: <http://www.ihf-hr.org/appeals/020204.htm> (last verified on 22 April 2004).

⁵⁰⁶ Ibidem.

⁵⁰⁷ EBRD, *Strategy for the Federal Republic of Yugoslavia*, 11 June 2002, p. 39, available at: <http://www.ebrd.com/about/strategy/country/sm/yugo.pdf> (last verified on 22 April 2004).

⁵⁰⁸ UNPAN, *Nations in Transit 2003: Country Report of Yugoslavia*, available at: <http://unpan1.un.org/intradoc/groups/public/documents/nispacee/unpan012483.pdf> (last verified on 22 April 2004).

⁵⁰⁹ I. Davis, *Small Arms and Light Weapons in the Federal Republic of Yugoslavia: The Nature of the Problem*, Saferworld, May 2002, p.11-28.

⁵¹⁰ I. Davis, C. Hirst, B. Mariani, *Organised Crime, Corruption and Illicit Arms Trafficking in an Enlarged EU*, Saferworld, December 2001, p. 5, available at: <http://www.saferworld.co.uk/organised20%crime.pdf>, (last verified on 22 April 2004), p. 25.

risk of arrest.⁵¹¹ Smugglers allegedly obtained a certain amount of protection from the former government and are said to have also looked for protection from the new one.⁵¹² Various scandals have been reported the press over the last year, mainly regarding Montenegro. In the latter, even the country's president was accused in 2001, by Italian authorities, of being involved in an organised crime cigarette smuggling ring.⁵¹³

Over the last 10 years, 100,000 **vehicles** that had been stolen in Western Europe, ended up **in former** Yugoslavia.⁵¹⁴ The route most often used for stolen vehicles starts in Western Europe and then passes through Albania and Bulgaria.

Organised crime groups are also linked to activities such as **kidnapping for ransom**. In April 2002 one of Serbia's richest businessman was abducted and a 2,500,000 Euro ransom was demanded by criminals for his release. Organised criminal groups also seem to have committed a conspicuous number of murders. The victims were members of the groups and politicians. The murder of a journalist who was involved in an anti-corruption campaign was also attributed to national organised crime groups.⁵¹⁵

Criminal associations also commit other kinds of crimes, which have a direct impact on the country, such as **armed robbery, bank fraud, racketeering and the counterfeiting of audio CDs and software** with the consequent violation of intellectual property laws.

Money laundering is also a problem in Serbia and Montenegro, especially in Montenegro and Kosovo. Up to one year ago it was possible to establish an offshore bank with less than 10,000 German marks. Procedures for the constitution did not require the disclosure of identity of the real owners of the bank and not even that of the founders. The source of the funds used to constitute the bank did not have to be disclosed either. Banks could even be purchased over the Internet. The lack of control regarding the founders, managers, owners and founding capital of the banks meant that criminal groups could also set up their own banks with no risk of being discovered. They then used these financial institutions to launder money. Russian groups used offshore banks to wash dirty money. In 2001, 500 such banks existed in Montenegro, which managed money worth hundreds of millions Euros in

⁵¹¹ Interpol Office, cit.

⁵¹² 'Yugoslavia takes steps to Fight Organised Crime and Corruption', in *The Balkan Times*, 21 June 2001, available at: <http://www.balkantimes.com/html2/english/010622-SVETLA-001.htm> (last verified on 22 April 2004).

⁵¹³ Italian prosecutors and police are still investigating the issue and no trial has been initiated yet. In R. Pomeroy, 'R.J. Reynolds Accused of Money Laundering', 11 January 2002, available at: <http://www.rense.com/general31/rj.htm> (last verified on 22 April 2004).

⁵¹⁴ B. Milicevic, 'Yugoslav readmitted', *Balkan Times*, 24 September 2001, available at: <http://www.balkantimes.com/html2/english/010924-BORIS-001.htm> (last verified on 22 April 2004).

⁵¹⁵ 'Yugoslavia Takes Steps to Fight Organised Crime and Corruption', in *The Balkan Times*, 21 June 2001, available at: <http://www.balkantimes.com/html2/english/010622-SVETLA-001.htm> (last verified on 22 April 2004).

different currencies.⁵¹⁶ At present, no new offshore bank can be constituted, but not all the old ones have ceased their operations. Moreover, the Finance Ministry of Montenegro did not disclose the information regarding the situation of the 400 offshore countries that should have been dissolved after their failure to re-establish themselves as regular banks.⁵¹⁷

Another method that organised criminals may have used to launder money is the exploitation of the quite 'peculiar' transition to the Euro. At the beginning of 2002 there was an advertising campaign in both Serbia and Montenegro that explained to the citizens 'the convenience' of changing their money into Euros. Subsequently, there was a massive exchange of millions DM (which had been circulating in Serbia and Montenegro together with the national currency since the 70s) into Euros.⁵¹⁸ To exchange cash only an identity card was required and no investigation was made regarding the origins of the money. People who exchanged less than 10,000 DM (approximately Euro 5,000) did not even have to open an account and could simply walk out the bank with the cash.⁵¹⁹ Although no evidence exists that organised crime money laundering actually took place using this method, this 'transition to the Euro' could certainly have been a good opportunity for criminal groups to hand in dirty cash and get clean Euros in exchange.

The huge profits made in the criminal activities described above, the corrupt environment⁵²⁰ and the possibilities for money laundering are a source of great concern also from the point of view of the reinvestment of capital in **terrorist** activities.⁵²¹

⁵¹⁶ 'Suspicious Offshore Banks in Montenegro. Are They Laundering Money?' in *AIM Press*, 23 August 2001, available at: <http://www.aimpress.org/dyn/trae/archive/data/200108/10823-001-trae-pod.htm> (last verified on 22 April 2004).

⁵¹⁷ U.S. Department of State, *International Narcotics Control Strategy 2003*, cit.

⁵¹⁸ In Serbia it is estimated that in the first two days of the availability of the Euro, bills and coins for DM 800 million were exchanged for Euros; in Montenegro, one bank in the capital was requested to exchange DM 800,000 in a single morning. See: E.L. Andrews, 'Euro is a Hit in Montenegro (Yes, Montenegro)', in *The New York Times*, 17 January 2002, available at: <http://www.nytimes.com/2002/01/17/international/europe/17BALK.html> (last verified on 22 April 2004).

⁵¹⁹ *Ibidem*.

⁵²⁰ 'Serbia maintains illegal financial flows for Serbian security services, political parties and alternative centres of powers'. See International Crisis Group, *Serbia after Djindjic*, December - July 2003, available at: http://www.bosnia.org.uk/bosrep/report_format.cfm?articleid=962&reportid=157 (last verified on 22 April 2004).

⁵²¹ BBC Monitoring International Reports, *Serbia-Montenegro's Svilanovic in Talks with Macedonian Leadership*, 27 February 2003, available at: <http://www.humantrafficking.com/humantrafficking/client/view.aspx?ResourceID=2303> (last verified on 22 April 2004).

2. LEGISLATION AND PRACTICES

2.1. CRIMINAL LAW

Serbia and Montenegro has signed and ratified most of the relevant international and European instruments against organised crime: the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ratification on 23.06.2003), the 1999 Council of Europe Criminal Law Convention on Corruption (ratification on 18.12.2002), and the 2000 United Nations Convention against Transnational Organised Crime and its protocol on trafficking in persons (ratification on 06.09.2001).

Despite these international efforts, the uniform implementation of the standards set out by the above-mentioned instruments appears to be rather difficult to achieve in the territory of Serbia and Montenegro.

In the Republic of Serbia new provisions have been recently (2003) included in the Serbian criminal code to criminalize human trafficking (art. 111b, Criminal Code of Serbia).⁵²² Art. 201a of the Criminal Code of Montenegro (lastly amended in 2002) establishes a distinct offence of trafficking in human beings modelled after the UN Protocol definition (exceptions were made for the elements of 'recruiting, transferring and harbouring, which are not part of the definition').⁵²³

⁵²² Article 111b (Human trafficking) of the Criminal Code of Serbia (Amending Law to the Criminal Code of the Republic of Serbia, Official Gazette of RS No. 39/2003, translated by OSCE Mission to Serbia and Montenegro Legal Translation Unit, 17 April 2003): (1) Whoever by use of force or means of threat, by deception or perpetuation of deception, the abuse of power, trust or of a position of subordination or vulnerability of another person: recruits, transports, transfers, surrenders, sells, buys, acts as an intermediary in transfer or sale, conceals or keeps another person for the purpose of obtaining some gain, exploitation of labour, criminal activities, prostitution or begging, for pornographic purposes, removal of organs for transplantation or exploitation in armed conflicts, shall be punished with imprisonment from one to ten years. (2) If the offence referred to in paragraph 1 of this Article has been committed against several persons, by kidnapping, while performing official duty, within a criminal organisation, in a particularly cruel or humiliating way or causing a severe bodily harm, the perpetrator shall be punished with imprisonment of minimum three years. (3) If the offence referred to in paragraph 1 of this Article has been committed against a minor or resulted in death of the injured party, the perpetrator shall be punished with imprisonment of minimum five years. (4) The perpetrator of the offence referred to in paragraph 1 of this Article which has been committed against a person under the age of 14 shall be punished as provided for such offence even if he/she does not use force, means of threat or other method referred to in paragraph 1 of this Article.

⁵²³ Art. 201a, section 1 (Trafficking of Human Beings) of the Criminal Code of Montenegro as amended in Official Gazette No. 30/02: Anyone who picks up, transports, carries or receives persons with the intention of exploiting them for the purpose of forced labour, prostitution or other forms of sexual abuse by coercion, threat or deception or in any other way, shall be sentenced to a minimum of one to a maximum of eight years imprisonment. Anyone who transports persons under paragraph (1) from one country to another will be sentenced to a minimum of 6 months to a maximum of 5 years imprisonment. Anyone who commits the acts under paragraphs (1) and (2) against persons less than 14 years of age or against a minor person shall be sentenced to minimum of one and to a maximum of 10 years imprisonment. The organiser of the acts under paragraphs (1), (2) and (3) of this article shall be sentenced to a minimum 5 years imprisonment. If an act under paragraphs 1 and 2 of this article has the consequence of causing serious physical injury to a person, the perpetrator shall be sentenced to a minimum of one and to a maximum of 12 years

In the Republic of Serbia there is a provision dealing with criminal association (art. 227 of the Criminal Code of Serbia)⁵²⁴ and a special law for the fight against organised crime has recently been enacted in accordance with the Palermo convention. In the Republic of Montenegro, criminal association is punished under art. 202 of the Criminal Code of Montenegro.⁵²⁵

Drug trafficking is sanctioned by art. 245 of the FRY Criminal Code.⁵²⁶ The definition is harmonised with the United Nations conventions against drugs, but according to the latest reports, the capacity to enact these provisions has been severely hampered by the economic constraints resulting from the last decade of political isolation and financial embargo.⁵²⁷

imprisonment. If an act under paragraphs (1) and (3) of this article has the consequence of causing the death of one or more persons, the perpetrator shall be sentenced to a minimum of 10 years imprisonment. Anyone who keeps or destroys an identification card, passport or other personal identification document belonging to another person in order to commit acts specified under paragraphs (1) and (2) of this article shall be sentenced to a minimum of 6 months and to a maximum of 5 years imprisonment. Anyone who uses or arranges for the use of sexual favours from persons under paragraph (1) of this article shall be sentenced to a minimum of 6 months and to a maximum of 5 years imprisonment. Anyone who commits the acts specified under paragraph (8) of this article against a person less than 14 years of age or against a minor person shall be sentenced to a minimum of 1 and to a maximum of 10 years imprisonment. For a deeper comment of these provisions, see A. Kartusch, *Opinion and Commentary on Criminal Law Reforms in South-Eastern Europe applicable in Serbia and Montenegro*, LARA Project – Criminal Law Reform Against Trafficking in Human Beings, March 2003, p. 16. Available at the Council of Europe website (last verified on 18 February 2004).

⁵²⁴ Definition of criminal association (art. 227 CC of the RS): (1) Whoever organizes a group of persons or band for the purpose of the commission of criminal acts defined in the law of the republic, for which a punishment of five years or a heavier penalty might be imposed, shall be punished by imprisonment for a term exceeding three months but not exceeding five years. (2) A member of the group or band referred to in paragraph 1 of this article shall be punished by imprisonment for a term not exceeding one year. (3) A member of a group or band referred to in paragraph 1 of this article who exposes the group before he has committed a criminal act in its ranks or on its account, may have his punishment remitted.

⁵²⁵ Article 202 (Criminal Association) of the Criminal Code of Montenegro, as amended in Official Gazette No. 30/02: Anyone who organizes a group or a gang whose aim is to perform criminal activities such as those that Republican law prescribes to be punishable by minimum five year imprisonment sentence shall be punished by an imprisonment sentence ranging from three months to five years. A member of the group or a gang as of paragraph 1 herein shall be punished by maximum one-year imprisonment sentence. A member of the group or a gang who reports to the authorities before s/he committed a criminal activity either within the group or gang or for it can be granted immunity. Anyone in charge of masterminding a criminal activity who prevents the commitment of a criminal act as of paragraph 1 either through denouncing it or in any other way shall be punished by maximum one year imprisonment sentence or s/he can be acquitted of any charges thereof.

⁵²⁶ Article 245 (Unauthorized production and sale of narcotics) of the FRY Criminal Code (1976, amended in 1977): (1) Whoever, without authority, manufactures, processes, sells or offers for sale, or purchases, keeps or transfers for sale, or intercedes in a sale or purchase, or otherwise puts into circulation substances or preparations which are declared intoxicating drugs or psychotropic substances, shall be punished by imprisonment for a term exceeding six months but not exceeding five years. (2) If any offence described under paragraph 1 of this article has been committed by several persons who joined for the purpose of committing the offence, or if the perpetrator of the act has organized a network of middlemen or re-sellers, or if the offence has been committed using a particularly dangerous narcotic or psychotropic substance, shall be punished by imprisonment for a term exceeding one year but not exceeding 10 years. (3) The intoxicating drugs and psychotropic substances, as well as the means of their production, shall be forfeited.

⁵²⁷ U.S. Department of State, *International Narcotics Control Strategy Report 2002*, March 2003, available at <http://www.state.gov/g/inl/rls/nrcrpt/2002/html> (last verified on 15 January 2004).

Money laundering is punished by art. 27 of the Law against money laundering of 28 September 2001. This law came into effect in the Serbian portion of Serbia and Montenegro in July 2002 and brings Serbia into line with the FATF Forty Recommendations.⁵²⁸ According to this law, the activities of money laundering include depositing, or introducing into the financial system in any manner, money that has been acquired through illegal activity. This includes money derived from the grey market economy, arms and narcotics-trafficking. Furthermore, a new AML draft law that will bring Serbia in full compliance with international standards is in the process of being approved.

Montenegro passed AML legislation 24.09.2003. In addition, the new Criminal Code (last amended in June 2003) criminalizes money laundering and enables the government to confiscate money and property involved in criminal activity.

There is no law on the prevention of money laundering in Kosovo, which makes this region an attractive oasis for illegal money transactions and other forms of organised and serious financial crime.

Liability of legal persons in Serbia and Montenegro is provided, but only under the administrative laws and for minor offences regarding commercial crimes.

2.2 CRIMINAL PROCEDURE

The only special means of investigation available in the Republic of Serbia are interceptions (of telephone conversations, fax transmission and Internet transmission). Interceptions have to be authorised by the court and can be applied only to drug trafficking related cases. The intercepted material can be used as evidence during a criminal trial if it is collected according to the law.

Audio or video recording of events taking place on private premises, undercover operations, use of storefronts by investigative units and covert methods such as controlled delivery (only for drug trafficking related cases) are not allowed.

The most noticeable procedural shortcoming in Serbia and Montenegro is the absence of a legislation, which provides for witness protection. However a draft law is in preparation and its adoption is expected by the end of 2004. Art. 109 of the FRY CCP is currently limited to the protection of a victim 'from insult, threat or any other attack', but no special police measures are described such as specific in-court witness protection measures like video-links testimonies or witness concealment.⁵²⁹ The same situation can be found in Montenegro where no legal provisions can be found to protect witness, even if a Victim's Protection Programme has been recently enacted.

Finally, confiscation provisions can be found at a federal level. Art. 69 of the Federal Criminal Code 'enables' (not 'obliges') judges to confiscate objects owned by the offender that were used or destined to be used in the commission of a criminal act or that resulted from the commission of such an act. In some cases confiscation is

⁵²⁸ Ibidem.

⁵²⁹ A. Kartusch, *Opinion and Commentary on Criminal Law Reforms in South-Eastern Europe applicable in Serbia and Montenegro*, cit., p. 14.

mandatory, but it is not clear whether this applies to all organised criminal activities. Moreover, art. 84 of the Federal Criminal Code provides for court appropriation of material gain, which was acquired by the commission of a criminal act. In these cases, value confiscation is admitted. The federal legislation also allows the 'reversal of the burden of proof' and conviction is not always a requisite for confiscation provisions.

In 2003 Montenegro also amended its criminal code in order to enable the government to confiscate money and property involved in criminal activity.

Serbia is currently in the process of amending their Criminal Procedure Code to bring it into line with Council of Europe standards. At the moment Serbia has two provisions dealing with confiscation: art. 504 CPC and art. 39a CC.

2.3. DATA PROTECTION RULES

Serbia and Montenegro has not yet ratified the 1981 COE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), nor has it ratified any bilateral or multilateral agreement within the framework of police and judicial cooperation including specific provisions for personal data protection with other countries or with Europol.

A Law on Protection of Personal Data entered into force at the federal level in 1998.⁵³⁰ It applies also to law enforcement agencies and prosecution offices. Exemptions may however be granted on the grounds of national security and investigative secrecy (art. 13).⁵³¹ In general, however, law enforcement agencies and prosecution offices are duty-bound to make sure that personal data are not further processed in a way that is incompatible with the purposes for which the data were collected. Security measures must be applied in accordance with the laws regulating work of police and prosecution's offices. The following persons are responsible for the observance of data protection provisions during an investigation: the head of the relevant office, individual judges and prosecutors and members of the administrative staff who handle personal data.

An independent supervisory authority is established according to the law (art. 4–10), but it is not formed yet. When the legal provisions will be actually implemented, the supervisory authority will have, among the others, the power to bring violations of data protection to the attention of competent judicial authorities and to establishes and keep a catalogue on the collection of personal data.

As to transborder data flows, art. 24 of the Personal Data Protection Act establishes that, provided reciprocity, 'the data from the collection of personal data may be taken out of the Federal Republic of Yugoslavia [Serbia and Montenegro], if the state the data are taken to has established the protection of personal data which

⁵³⁰ The text of Serbia and Montenegro Data Protection Law is available on the CD '*Legal Materials*' attached to this report.

⁵³¹ Art. 13, Law on Protection of Personal Data: The citizen cannot exercise the rights from Articles 11 and 12, p. 1 through 4 of this Law [rights to information, correction, deletion], if such rights refer to the collection of personal data kept in accordance with the regulations for both criminal records and records department in the field of security of Federal Republic of Yugoslavia [Serbia and Montenegro].

encompasses foreign citizens on a level which may not be below that provided by this Law'. This also means that requests for assistance in a criminal investigation originating by States that are not Party to the 1981 Convention may be refused because the recipient State could not guarantee data quality, i.e. that the data are obtained and processed fairly and lawfully, stored only for specified and legitimate purposes, adequate, accurate and kept up to date.

2.4. MULTILATERAL AND BILATERAL AGREEMENTS

a) Legislation

A variety of sources (i.e. international and European conventions, multilateral and bilateral agreement and national law) regulate the way in which Serbia and Montenegro provides and receives assistance in pretrial investigations into transnational organised crime cases led by police officers and by prosecutors and investigating judges.

Serbia and Montenegro recently signed and ratified all the international and European instruments for judicial and police cooperation, which are included in the framework of reference of this report: the European Convention on Extradition on 30.09.2002 (1957 COE - ETS 024), the First additional Protocol to the European Convention on Extradition on 23.06.2003 (1975 COE - ETS 086), the Second additional Protocol to the European Convention on Extradition on 23.06.2003 (1975 COE - ETS 098), and the European Convention on Mutual Assistance in Criminal Matters on 30.09.2002 (1959 COE - ETS 030) and its Additional Protocol on 23.06.2003. Additionally, police officers and prosecutors may make use of the international cooperation provisions provided for in the following specific instruments against organised crime: the United Nations Convention against Illicit Traffic of Drugs and Psychotropic Substances (1988), the Criminal Law Convention against Corruption (1999 COE - ETS 173). From the 1st February 2004 also the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990, COE - ETS 141) will enter into force.

Serbia and Montenegro also entered into bilateral and multilateral agreements regulating international judicial assistance with the following SEE countries and EU countries: Albania (1926), Bulgaria (1956), Hungary (1968 and 1986), Romania (1960), Turkey (1973, 1989), Austria (1982), Belgium (1971), Denmark (1988), France (1969 and 1970), Germany (1971), Greece (1959), Italy (1922), Spain (1980) and United Kingdom (1900). These agreements are rather old (the most recent was signed in 1988) and it is unclear whether they have been updated to take into account the modern legal principles governing international legal assistance (e.g. direct cooperation between local authorities in urgent cases).

Besides this international framework, prosecutors and investigating judges are obliged to respond to foreign requests for assistance by art. 530 to 555 of the Code of Criminal Procedure of the Federal Republic of Yugoslavia (2001, amended in 2002), which applies when there is no international treaty regulating mutual legal assistance. Dual criminality is not required for international assistance in general, only for extradition cases.

b) Practices

Given the recent ratification of the international and European instruments mentioned above it has not been possible to establish their frequency of use.

As to bilateral agreements, in the experience of the public prosecutor interviewed, only the agreement with Romania is often used in practice. Agreements with FYRoM, Hungary, Greece and Italy are used averagely and all the others agreements are rarely used or not used at all.

2.5. ASSISTANCE THROUGH DIRECT CONTACT

a) Legislation

In Serbia and Montenegro there are no agreements or legislation that foresee direct judicial cooperation. Direct police cooperation is instead formalised with agreements between Serbia and Montenegro and the following countries: Bulgaria (signed), Croatia (signed), Hungary (ratified), Slovenia (ratified) and Greece (signed). Furthermore, with another 16 countries drafts of agreement have been exchanged.

By law Serbian prosecutors and investigating judges, when directly contacted by colleagues of another country asking for assistance, must forward the request for assistance to their competent colleagues if they are unable implement the request themselves. They are also obliged to summon the witnesses and the experts, whose testimony is requested by the colleagues of a foreign country. Serbian prosecutors are obliged by law to execute freezing orders, but not confiscation order, search warrants, and all the other ordinary and special means of investigations (interceptions, audio or video recording, undercover operations, use of storefronts by investigative units, covert methods such as controlled delivery). They are however obliged to transmit extracts of bank records when requested by a foreign colleague.

There are no liaison magistrates in foreign countries that can help prosecutors or investigating judges from Serbia and Montenegro identify competent foreign counterparts address their requests for assistance. When these offices do exist such as in FYRoM, Romania, Slovenia, Greece and Italy, they only perform diplomatic activities.⁵³²

The situation is very different for police officers. They are not obliged to forward requests for assistance to competent colleagues when the request is beyond their jurisdiction. Additionally, if they gather information on a transnational organised crime ring that could be useful in developing an investigation in another country, they are not obliged by law to forward that information to the authorities in the other country. Police from Serbia and Montenegro can however send phone records and documents related to auto vehicle ownership. They cannot send bank or criminal records, but only data regarding certain business transactions and data regarding verdicts of persons.

⁵³² Only the First municipal court and District court in Belgrade are entitled to give mutual legal assistance to foreign courts in the framework of their competence.

None of the remaining direct channels of communication between police officers (liaison officers, joint investigative teams and international joint customs surveillance operations) applies to Serbia and Montenegro. However, there is a liaison officer posted to SECI Center of Bucharest. When foreign police officers start a shadowing operation in their country, they can be authorised to continue it within the borders of Serbia and Montenegro in cooperation with local police.

b) Practices

Despite the absence of formal agreements, prosecutors do enter into direct contact with their colleagues from the FYRoM, Bosnia and Herzegovina. However, police officers cannot enter into direct contact with foreign colleagues if an agreement does not exist.

The other channels of direct cooperation are not existent; therefore, cannot be assessed in practice.

The reasons for this lack of direct cooperation in practice, according to the experts interviewed, cannot be imputed to the lack of training in investigating transnational organised crime cases, which both prosecutors and police officers consider to be of medium level. There are however material factors, such as the lack of computer equipment (computer networks and official e-mail accounts), which can be considered an obstacle to direct cooperation. Language problems are deemed relevant in the judicial but not in the police cooperation activities.

2.6. ASSISTANCE THROUGH INTERNATIONAL AND REGIONAL ORGANISATIONS

a) Legislation

Interpol is the normal instrument used by police officers for identifying the competent counterparts in foreign countries. The Interpol National Bureau of Serbia and Montenegro provides the police from foreign countries with the following, if requested:

- information regarding investigations of crimes committed in Serbia and Montenegro;
- information on investigations aimed at tracing goods located in Serbia and Montenegro, which are related to a crime committed abroad;
- information regarding criminal records;
- information related to the ownership of auto vehicles and regarding driving licenses issued in Slovenia;
- information regarding the ownership of phone numbers.

There are no formal agreements for cooperation with Europol, EJM and Eurojust.

b) Practices

According to experience of our experts, the degree of cooperation between Serbia and Montenegro and the international/European organisations relevant for police and judicial cooperation is rather poor. The following tables illustrate the level of cooperation (where 0=no cooperation, 1=low level of cooperation, 2=medium level

of cooperation and 3=high level of cooperation) in the different areas in which they operate. This evaluation is based on the personal judgement of the experts interviewed.

TABLE 15. DEGREE OF COOPERATION BETWEEN SERBIA AND MONTENEGRO AND INTERPOL

Exchange of strategic and operational information	1
Exchange of financial information on suspected corporate entities	0
Provision of direct contacts with local law enforcement authorities	0
Provision of direct contacts with local prosecution offices	0
Exchange of information on investigative procedures and crime prevention methods	1
Training initiatives	1
Advice and support in individual investigations	0
Exchange of liaison officers	2
Participation in joint investigative teams in a support capacity	1
Participation in joint investigative teams in an operative capacity	0

TABLE 16. DEGREE OF COOPERATION BETWEEN SERBIA AND MONTENEGRO AND EUROPOL

Exchange of strategic and operational information	1
Exchange of financial information on suspected corporate entities	0
Provision of direct contacts with local law enforcement authorities	0
Provision of direct contacts with local prosecution offices	0
Exchange of information on investigative procedures and crime prevention methods	1
Training initiatives	1
Advice and support in individual investigations	0
Exchange of liaison officers	0
Participation in joint investigative teams in a support capacity	0
Participation in joint investigative teams in an operative capacity	0

3. GOOD PRACTICES

3.1. STRUCTURES SET UP FOR INTERNATIONAL COOPERATION PURPOSES

The central authorities through which prosecutors or investigating judges and police officers channel their requests for international assistance are the Ministry of Justice and the Ministry of the Interior.

These authorities send and receive requests for assistance to and from foreign countries. For this purpose, they have translators readily available who can translate a request for assistance into the language of the requested state. However, this is not possible for all languages and translation problems are reported by the experts.

The requests for assistance are sent only by mail, and no national standard form exists for the purpose of asking for international assistance.

The process of getting an answer to an assistance request is long. It can take up to two months to get an answer for an assistance request made to a foreign State.

3.2. DATABASES ON ORGANISED CRIME

Serbia is well advanced as far as databases and access to them by foreign police officers is concerned. At the moment there are two centralised national databases, which contain information about persons wanted and convicted for participating in OC groups. Both of them are accessible by foreign police officers. There are, however, some conditions that must be fulfilled: the request must be inherent to a police cooperation operation and should pass through NCB Interpol.

No common criminal databases have yet been established to directly share OC information collected in Serbia with foreign counterpart colleagues.

3.3. *MODI OPERANDI*/METHODS IN THE INTERNATIONAL COOPERATION PROCESS

Serbia has enacted the following *modi operandi*/methods in order to speed up the international cooperation process:

- acknowledgement of all requests and written enquiries concerning the execution of requests;
- providing the requesting authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing the request;
- stating when the assistance requested is likely to be provided;
- ensuring that requests are submitted in compliance with the relevant treaty or other international arrangements;
- providing the requested authorities with the name and contact details, including telephone and fax numbers, of the authority and, if possible, the person responsible for issuing the request;

- compliance with the formalities and procedures expressly indicated by the requesting member state;
- spontaneous exchange of information;
- joint operational meetings;
- cooperation through The South Eastern Prosecutor Advisory Group (SEEPAG)

4. EMERGING OBSTACLES

The analysis of legislation, practices and good practices relevant for international cooperation against organized crime has highlighted some shortcomings that are reported here for the sake of clarity, as they represent the background and rationale for the recommendations included in paragraph 5.

4.1. OBSTACLES IN LEGISLATION

1. The lack of provisions related to liability of legal persons in both Entities

One of the most evident gaps in the legal framework against organised crime in both the Republic of Serbia and in the Republic of Montenegro is the partial (for Serbia) or total (for Montenegro) lack of provisions related to liability of legal persons involved in criminal activities. This legal shortcoming is even more serious in the view of the high level of infiltration of organised criminals in legitimate activities and the exploitation of these covers to carry out criminal acts (e.g. use of casinos, real estate sector and so on to launder money).

2. The gaps in the witness protection measures in both the Entities

Art. 109 of the FRY CC establishes general obligations to protect witnesses and victims during the trial. In Montenegro there is also a victim protection program. However, neither in Serbia nor Montenegro are specific witness protection measures, such as video links or other adequate means, taken with a view of protecting the safety of witnesses during trials.

3. The problems in the confiscation regime in the Republic of Serbia

At a federal level, art. 69 and 84 of the 1977 criminal code enable courts to confiscate objects related to criminal activities and material gain also for equivalent value. In June 2003 Montenegro also amended its criminal code in order to enable the government to confiscate money and property involved in criminal activity. Serbian laws do not allow for seizure and confiscation of proceeds stemming from trafficking.

4. The limitations in the use of special means of investigation in both Entities

In Serbia and Montenegro it is not currently possible for law enforcement agencies to use audio or video recording of events taking place on private premises, undercover operations, storefronts by investigative units or covert methods such as controlled delivery. This represents a serious obstacle in the investigations regarding TOC where these special means are essential for their successful completion.

5. The inadequacy of data protection provisions in both the Entities

Serbia and Montenegro has not yet ratified the 1981 COE Convention and relative data protection provisions. Furthermore, it has not concluded bilateral agreements within the framework of police and judicial cooperation containing provisions to protect personal data. There is also a lack of agreements with Europol regulating the reciprocal transmission of data. Finally, there is no supervisory authority dealing with data protection.

The absence of such legal instruments and measures for data protection obstructs police and judicial cooperation with the countries that have enacted a data protection regime and are party to the 1981 COE Convention. It also impairs the exchange of information with Europol.

6. The lack of bilateral agreements for police and judicial cooperation with some neighbouring countries

Although Serbia and Montenegro has ratified many multilateral instruments of police and judicial cooperation, bilateral agreements have not yet been concluded with all neighbouring countries. The lack of bilateral instruments with all neighbouring countries might impair the cooperation process at a practical level, because through the deployment of solely multilateral instruments, it is not possible to reach the level of definition and detail achieved by bilateral agreements.

7. The scarcity of instruments for direct police cooperation in the Republic of Serbia

Serbian police officers are not obliged by law to forward requests for assistance to competent colleagues if they have no jurisdiction, nor they are obliged to forward information on TOC rings, which may be useful to foreign colleagues.

They do not have the legal possibility to directly send bank records or documents related to criminal records if requested to do so by a foreign counterpart.

Additionally, no joint investigation teams and international joint customs surveillance operations are conducted with the simultaneous participation of Serbian police/customs officers and foreign colleagues.

8. The scarcity of instruments for direct judicial cooperation in the Republic of Serbia

Serbian prosecutors/investigating judges have no legal obligation to:

- execute search warrants for foreign colleagues;
- execute ordinary and special means of investigation for foreign colleagues;
- execute confiscation orders.

Additionally, there are no liaison magistrates posted by Serbia to foreign countries (apart from the SECI Center), who might expedite the cooperation process.

4.2. OBSTACLES IN PRACTICES

9. The inadequacy of technological equipment for the exchange of information to Serbian prosecutors

Computer networks (intranets) and official e-mail accounts are not available to all Serbian prosecutors/judges and police officers investigating OC. This impairs the exchange of information on OC.

10. The lack of ready availability of translators for Serbian prosecutors

Serbian prosecutors do not have translators readily available of for the documents coming from a foreign country in answer to a cooperation request.

11. The low degree of cooperation between Serbia and Montenegro and international and regional organisations

The degree of cooperation with Interpol and Europol is rated very low. Moreover, there are no cooperation agreements with Eurojust and EJM. These regional organisations could enhance data exchange and cooperation between European countries, but the lack of cooperation agreements or protocols impedes this form of cooperation.

4.3. OBSTACLES IN GOOD PRACTICES

12. The lack of use of fast means of communication by central authorities managing requests of international cooperation

Central authorities managing requests for international cooperation do not use email or fax to send requests of cooperation. This, combined with the fact that they do not use national standard form to ask for international assistance, may explain why it takes so long to get an answer (up to two months).

13. The inadequate adoption of good practices of international cooperation

Serbia and Montenegro has not yet adopted a large part of the good practices indicated by European and international standards on international cooperation, including:

- setting priority to requests that have clearly been marked as 'urgent' by the requesting authority;
- giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authorities how the difficulty may be overcome;
- explaining the reasons for the urgency or deadline;
- direct sending of procedural documents;
- joint operational meetings.

These omissions might slow down the cooperation process between Serbia and Montenegro and other countries, as these practices have proven to be very important to carry out effective international assistance.

4.4. OTHER OBSTACLES MENTIONED BY THE EXPERTS

14. Obstacles to investigating organised crime

The experts interviewed mentioned the following as the most significant obstacles to investigating organised criminal groups:

- lack of legislation (in particular lack of regulations on units in charge of combating organised crime);
- inadequate follow-up techniques;
- limited investigative powers;
- lack of material resources within the offices participating in organised crime investigations;
- lack of specialised investigative units.

15. Obstacles to police assistance

The experts interviewed mentioned the following as the most significant obstacles to *police assistance* received by Serbia and Montenegro from other countries in pre-trial investigations into transnational organised crime:

- delay of response to requests for assistance;
- lack of harmonisation in legislation;
- high turnover of personnel in the police forces.

16. Obstacles to judicial assistance

The experts interviewed mentioned the following as the most significant obstacles to *judicial assistance* received by Serbia and Montenegro from other countries in pre-trial investigations into transnational organised crime:

- delay of response to requests for assistance;
- lack of harmonisation in legislation;
- difficulty in identifying the foreign competent counterpart;
- language problems
- lack of human resources;
- lack of financial resources;
- lack of training.

5. RECOMMENDATIONS

Recommendation n. 0

A preliminary recommendation to Serbia and Montenegro stems from the articulated structure of the country after February 2003 (see Introduction). The distribution of criminal competences and powers to legislate to the two Entities amplifies the importance of coordination among the institutions dealing with organized crime in Serbia and Montenegro.

Mechanisms for internal cooperation should be agreed upon in specific protocols and a unified structure dealing with international cooperation issues should be set up in order to facilitate foreign prosecutors and police officers seeking assistance in Serbia and Montenegro.

In this framework also the establishment of specialized units common to both the Entities dealing with organized crime, and specifically with exchange on information on organized crime, should be considered.⁵³³

5.1. RECOMMENDATIONS ON LEGISLATION

Recommendation n. 1

'Establishing liability of legal persons for OC activities both in the Republic of Serbia and in the Republic of Montenegro'

Background and rationale

One of the most evident gaps in the legal framework against organised crime in both the Republic of Serbia and in the Republic of Montenegro is the partial (for Serbia) or total (for Montenegro) lack of provisions related to liability of legal persons involved in criminal activities. This legal shortcoming is even more serious in the view of the high level of infiltration of organised criminals in legitimate activities and the exploitation of these covers to carry out criminal acts (e.g. use of casinos, real estate sector and so on to launder money).

Recommendation

Action should be taken to enact provisions dealing with the responsibility of legal persons.

Implementing measures

- Serbian and Montenegrin legislators should include, in the respective criminal codes or special legislation against organised crime, provisions on liability of legal persons engaging in organised crime activities.
- Alternatively, a form of administrative liability for legal persons should be sought in order to make legal persons accountable for their participation in organised crime activities.

⁵³³ These preliminary suggestions have also been recommended by the experts interviewed.

Recommendation n. 2

'Enacting specific witness protection provisions both in the Republic of Serbia and in the Republic of Montenegro'⁵³⁴

Background and rationale

Art. 109 of the FRY CC establishes general obligations to protect witnesses and victims during the trial. In Montenegro there is also a victim protection program. However, neither in Serbia nor Montenegro are specific witness protection measures, such as video links or other adequate means, taken with a view of protecting the safety of witnesses during trials.

Recommendation

Action should be taken to enact specific witness protection provisions.

Implementing measures

- In the Republic of Serbia, the draft law on the protection of witnesses should be enacted.
- The Montenegrin government should consider introducing specific witness protection measures, such as video links or other adequate means, in order to protect the safety of witnesses during trials.

Recommendation n. 3

'Enacting the seizure and confiscation laws in the Republic of Serbia'

Background and rationale

At a federal level art. 69 and 84 of the 1977 criminal code enable courts to confiscate objects related to criminal activities and material gain also for equivalent value. In June 2003 Montenegro also amended its criminal code in order to enable the government to confiscate money and property involved in criminal activity. Serbian laws do not allow for seizure and confiscation of proceeds stemming from trafficking.

Recommendation

Action should be taken to enact laws allowing for seizure and confiscation of proceeds stemming from trafficking.

Implementing measures

Serbian legislators should consider the opportunity of enacting laws, both civil and criminal, allowing for the seizure and confiscation of proceeds stemming from trafficking in accordance with internationally recognised standards.

⁵³⁴ A suggestion that was also made by the police expert.

Recommendation n. 4

'Empowering law enforcement agencies with special means of investigation'

Background and rationale

In Serbia and Montenegro it is not currently possible for law enforcement agencies to use audio or video recording of events taking place on private premises, undercover operations, storefronts by investigative units and covert methods such as controlled delivery. This represents a serious obstacle in the investigations regarding TOC where these special means are essential for their successful completion.

Recommendation

Action should be taken to empower law enforcement agencies with special means of investigation.

Implementing measures

Serbian and Montenegrin legislators should consider the opportunity of introducing legislation empowering law enforcement with more efficacious means of investigation, such as audio or video recording of events taking place on private premises, undercover operations, use of storefronts by investigative units and covert methods (e.g. controlled delivery).

Recommendation n. 5

'Enacting data protection rules and concluding agreements on data exchange'

Background and rationale

Serbia and Montenegro has not yet ratified the 1981 COE Convention and relative data protection provisions. Furthermore, it has not concluded bilateral agreements within the framework of police and judicial cooperation containing provisions to protect personal data. There is also a lack of agreements with Europol regulating the reciprocal transmission of data. Finally, there is no supervisory authority dealing with data protection.

The absence of such legal instruments and measures for data protection obstructs police and judicial cooperation with the countries that have enacted a data protection regime and are party to the 1981 COE Convention. It also impairs the exchange of information with Europol.

Recommendation

Action should be taken to enact data protection rules and conclude agreements on data exchange with Europol and the neighbouring countries.

Implementing measures

- The 1981 COE Convention should be signed and ratified.
- Serbia and Montenegro should conclude agreements on data protection with Europol and neighbouring countries within the framework of police and judicial cooperation.
- A supervisory authority should be established to deal with data protection.

Recommendation n. 6

'Concluding agreements on police and judicial cooperation with all neighbours'

Background and rationale

Although Serbia and Montenegro has ratified many multilateral instruments of police and judicial cooperation, bilateral agreements have not yet been concluded with all neighbouring countries. The lack of bilateral instruments with all neighbouring countries might impair the cooperation process at a practical level, because through the deployment of solely multilateral instruments, it is not possible to reach the level of definition and detail achieved by bilateral agreements.

Recommendation

Action should be taken to conclude bilateral agreements on police and judicial cooperation with all neighbouring countries.

Implementing measures

Serbia and Montenegro should conclude bilateral agreements on police and judicial cooperation with all neighbouring countries.

Recommendation n. 7

'Enhancing the channels of direct police cooperation in the Republic of Serbia'

Background and rationale

Serbian police officers are not obliged by law to forward requests for assistance to competent colleagues if they have no jurisdiction, nor they are obliged to forward information on TOC rings, which could be useful to foreign colleagues.

They do not have the legal possibility to directly send bank records or documents related to criminal records if requested to do so by a foreign counterpart.

Additionally, no joint investigation teams and international joint customs surveillance operations are conducted with the simultaneous participation of Serbian police/customs officers and foreign colleagues.

Recommendation

Action should be taken to enhance direct channels of cooperation for Serbian police officers.

Implementing measures

- Direct police cooperation should be promoted by establishing legal procedures to make police officers forward requests for assistance to competent colleagues if they have no jurisdiction.
- Information on TOC rings that could be useful to foreign colleagues, should be directed to common criminal databases or relevant international or regional organisations (Interpol, SECI Center).

- Direct police cooperation should be promoted by giving the legal possibility to police officers to directly send bank records or documents related to criminal records if requested so by a foreign counterpart.
- Serbia should station liaison officers abroad, especially in the countries where most of the requests for assistance are addressed.
- The use of joint investigation teams and international joint customs surveillance operations with the simultaneous participation of Serbian police/customs officers and foreign colleagues should be regulated and promoted in specific pieces of legislation.

Recommendation n. 8

'Enhancing the channels of direct judicial cooperation in the republic of Serbia'

Background and rationale

Serbian prosecutors/investigating judges have no legal obligation to:

- execute search warrants for foreign colleagues;
- execute ordinary and special means of investigation for foreign colleagues;
- execute confiscation orders.

Additionally, there are no liaison magistrates stationed by Serbia in foreign countries (apart from the SECI Center), who might expedite the cooperation process.

Recommendation

Action should be taken to enhance direct channels of cooperation for Serbian prosecutors/investigating judges.

Implementing measures

Direct judicial cooperation should be promoted by giving the legal and material possibility to prosecutors/investigating judges to adopt the measures of cooperation mentioned above. Possible implementing measures are:

- improving the legal framework for direct judicial cooperation making possible the measures of direct cooperation mentioned above;
- posting liaison magistrates abroad, especially in the countries where most of the requests for assistance are addressed, in order to expedite the process of cooperation.

5.2. RECOMMENDATIONS ON PRACTICES

Recommendation n. 9

'Improving technological equipment available to police officers/prosecutors'⁵³⁵

Background and rationale

Computer networks (intranets) and official e-mail accounts are not available to all Serbian prosecutors/judges and police officers investigating OC. This impairs the exchange of information on OC.

Recommendation

Action should be taken to improve the technological equipment available to police officers and prosecutors/judges investigating TOC cases.

Implementing measures

All prosecutors/investigating judges and police officers investigating TOC cases should be provided with a computer network and an official e-mail account by their agency.

Recommendation n. 10

'Providing prosecutors investigating TOC cases with ready availability of translators'

Background and rationale

Serbian prosecutors do not have readily available translators for the documents coming from a foreign country in answer to a cooperation request.

Recommendation

Action might be taken to provide readily available translators for prosecutors/judges investigating TOC cases.

Implementing measures

A 'translation service' could be established to provide fast and secure translation of documents coming from a foreign country in answer to a cooperation request.

⁵³⁵ A suggestion that was also made by the police expert..

Recommendation n. 11

'Promoting cooperation with international and regional organisations'

Background and rationale

The degree of cooperation with Europol is rated very low. Moreover, there are no cooperation agreements with Eurojust and EJM. These regional organisations could enhance data exchange and cooperation between European countries, but the lack of cooperation agreements or protocols impedes this form of cooperation.

Recommendation

Action should be taken to promote cooperation with international and regional organisations.

Implementing measures

- Operative protocols with Europol should set up with special attention to the areas where exchange of information and cooperation activities seem to be less operative;
- Contacts with EJM and Eurojust should be promoted;
- Training courses and seminars should be organised for middle level officers to enhance knowledge of the possibilities of cooperation with relevant international and regional organisations.

5.3. RECOMMENDATIONS ON GOOD PRACTICES

Recommendation n. 12

'Improving technological equipment available to central authorities'

Background and rationale

Central authorities managing requests for international cooperation do not use email or fax to send requests for cooperation. This, combined with the fact that they do not use a national standard form to ask for international assistance, may explain why it takes so long to get an answer (up to two months).

Recommendation

Action should be taken to improve the means adopted to send the requests of cooperation and to standardise the forms for requesting assistance.

Implementing measures

Central authorities should be able to use fast ways of communication to send the requests for cooperation.

Recommendation n. 13

'Enhancing *modi operandi*/methods in the international cooperation process'

Background and rationale

Serbia and Montenegro has not yet adopted a large part of the good practices indicated by European and international standards on international cooperation. These omissions might slow down the cooperation process between Serbia and Montenegro and other countries, as these practices have proven to be very important to carry out effective international assistance.

Recommendation

Action should be taken to enhance the *modi operandi*/methods in the international cooperation process.

Implementing measures

The authorities in Serbia and Montenegro dealing with mutual legal assistance should adopt the following good practices:

- setting priority to requests that have clearly been marked as 'urgent' by the requesting authority;
- giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authorities how the difficulty may be overcome;
- explaining the reasons for the urgency or deadline;
- direct sending of procedural documents;
- joint operational meetings.

8.10.

SLOVAKIA⁵³⁶

INTRODUCTION

Slovakia is situated in Central Europe and is bordered by Austria, the Czech Republic, Poland, Hungary and Ukraine.

The country is a parliamentary democracy which was established in 1993 following the division of the Czech and Slovak Federal Republic into two independent sovereign States. It became a UN member on 19.12.1993 and COE member on 30.06.1993.⁵³⁷ Slovakia has been a member of NATO since 29 March 2004 and an EU member State since 1 May 2004.

The Slovak criminal code (Act 140 of 1961) and the code of criminal procedure (Act 141 of 1961) have inherited their main features from the soviet hegemony in the territory. However, both instruments have also been the subject of extensive reforms to bring them up to democratic standards. Of particular relevance are the reforms in the field of the fight against organized crime (covert agents, witness protection, etc.) and the criminal procedure provisions, which greatly modified the principles underlying criminal proceedings and them more accusatorial (oral proceedings, presence of alternative means of concluding a trial/criminal proceedings). Many inquisitorial elements remain, however, such as the impossibility of cross examination, the officiality principle, i.e. the state monopoly of the power to initiate a proceeding and its duty to carry out all the acts provided for by criminal procedures by looking at both inculpatory and exculpatory elements.⁵³⁸

As to law enforcement structures, a specialized unit, called the 'Bureau of the Organized Crime' which combats organized crime, has been created inside the Ministry of Interior and the Headquarters of the Police Forces, which include the Anticorruption Unit.

⁵³⁶ The Slovakian country profile was based, among the other materials, on the answers given by one expert (Ms. Anna Ondrejova, Prosecutor, General Prosecutor's Office, Bratislava). The questionnaire to the police officer was not answered. This country profile thus contains only partial information on police cooperation in Slovakia.

⁵³⁷ Detailed information on the main Slovakian democratic institutions and its judiciary is available at: <http://www.legislationline.org> (last verified on 12.2.2004).

⁵³⁸ B. Pavišić and D. Bertaccini, *Le altre procedure penali. Transizioni dei sistemi processuali penali*, Vol. I, G. Giappichelli Editore, Torino, 2002, p. 335-361.

1. THE ORGANISED CRIME SITUATION

1.1 FEATURES OF THE ORGANISED CRIMINAL GROUPS

Organised crime is a feature of the crime situation in Slovakia⁵³⁹ and drug production and trafficking also constitute a serious problem. The number of organised criminal groups operating in the Slovak Republic ranges from 20 to 30 and each have an average of about 10 to 20 members.⁵⁴⁰ The whole territory of Slovakia is divided between organised crime groups, in particular the largest cities, and the groups are formed by nationals but also non-national individuals, who mainly come from Russia, Ukraine, FYRoM and Slovenia. The more serious criminal activities (economic crime, money laundering, privatisation distortions, drug trafficking and illegal migration) are organised not only by Slovakian, but also by Russians, Albanians and Italians.⁵⁴¹

The prevailing form of organised criminal groups in Slovakia can be defined as having an hierarchical structure, which is often based on strong family ties between members and more often have foreigners as part of structure.⁵⁴² The main groups recruit people from Ukraine, Russia, the Czech Republic, Albania, FYRoM, Slovenia and Hungary. These groups mainly operate at a regional level. Organised criminal groups operating in Slovakia sometimes use mediators, often called slaves, to commit crimes.⁵⁴³

Groups operating at a national level have very good links abroad⁵⁴⁴ (to different European and also non European countries)⁵⁴⁵ and sophisticated cross-border connections, especially where drug-related activities are concerned. Romania is used for stolen cars; Germany, Italy, Spain and the Netherlands are partners for trafficking women; other EU states are used for trafficking human beings; and

⁵³⁹ GRECO (Group of States against corruption), Directorate General I, Legal Affairs – Department of Crime Problems: First Evaluation Round, 'Evaluation Report on Slovak Republic', adopted by the GRECO at its 4th Plenary Meeting (12–15 December 2000), Strasbourg, 15 December 2000 (Greco Eva I Rep (2000) 2E Final), available at: <http://www.greco.coe.int> (last verified on 15 April 2004).

⁵⁴⁰ The number given is only an approximate one as the operational structures of these groups are very flexible.

⁵⁴¹ European Forum For Democracy and Solidarity, *Country Update Slovakia*, 20 August 2003, available at: http://www.europeanforum.net/country_updates/slovakia_update (last verified on 15 April 2004).

⁵⁴² Speech by the representative of the Slovak Republic at the *High Level Expert Meeting on Eastern European Organised Crime*, The Hague, 29–30 November 2001.

⁵⁴³ Ibidem.

⁵⁴⁴ 'Slovak origin criminally organised groups have links to foreign drug trafficking gangs through Slovak nationals who fled former Czechoslovakia and after 1989 returned as businessmen to run their business in their new democratic homeland. So-called Olas' Gypsies have also been linked to their close or far family based groups abroad. They utilize very good methods of labour division. A family clan facilitates import and distribution of drugs. Its members usually stay abroad for a long period of time', *ibidem*.

⁵⁴⁵ In Europe, all neighbouring countries are listed as general partner countries. Cooperation with organised criminal groups in other European countries varies according to the relevant commodity. Non-European countries include drug producers such as Columbia and other Latin American countries and Asian countries.

contacts with Scandinavia, the Netherlands, Germany, Turkey, Albania, Bulgaria and Romania are mentioned for drug trafficking.

Many organised criminal group leaders are Slovak nationals, however, groups involved in drug offences often have a foreign leader, mainly from Albania⁵⁴⁶/Kosovo, or a former USSR country. The key heroin and cocaine suppliers in Slovakia are Albanians with their origins in Kosovo, FYRoM or Croatia.⁵⁴⁷ According to the Slovak National Drug Squad, Albanian organized crime groups are responsible for 90 percent of all drug trafficking in Slovakia and enforcement officials say that Russian organized crime groups have also continued to be active in heroin trafficking over recent years.⁵⁴⁸ The shared border with Hungary and Ukraine was the site of the greatest number of attempts to enter Slovakia with illegal substances. The greatest number of attempts to smuggle substances out of Slovakia was made at the Czech and Austrian borders.⁵⁴⁹

In the Slovak Republic there are also some indications of the presence of Nigerian organised crime, Romanians, individuals from Turkey and Latin America.⁵⁵⁰

1.2. ACTIVITIES OF THE ORGANISED CRIMINAL GROUPS

Slovakia is not a **drug** producer, apart from small quantities of marihuana for domestic use and few synthetic drug laboratories spread out the country. However, Slovakia's geographical location along the major lines of communication connecting Western, Eastern and South-Eastern Europe makes it a transit country for the smuggling and trafficking of narcotics. Slovakia lies at the crossroads of two branches of the Balkan route (from Ukraine and the Russian Federation, and from Southwest Asia through Turkey and on to Germany, France, and other Western countries). The major transit points for incoming drugs are the shared borders with Hungary and Ukraine, while the Czech and Austrian borders are used to smuggle drugs out of the country. Russian and Albanian organised criminal groups are reported to be the more active in these trafficking activities.⁵⁵¹

⁵⁴⁶ 'Albanian organised crime groups based on Islamic religion have very strong ethnic and family ties. The structure of the decision-making body consists of up 3 to 7 persons. Not only Albanians, but also Slovaks facilitate so-called side activities, however without any interlink to a boss. Members usually stay abroad so that they can act as a connection to local criminal organisations, which then provide drugs supply e.g. from Turkey and their transportation to Western European countries. These direct links reach countries like Turkey and countries across Southern, Central, Western Europe, the United States and Canada', in Speech by the representative of the Slovak Republic at the *High Level Expert Meeting on Eastern European Organised Crime*, The Hague, 29–30 November 2001.

⁵⁴⁷ Ibidem.

⁵⁴⁸ U.S. Department of State, *International Narcotics Control Strategic Report 2002*, 2003, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2001/rpt> (last verified on 15 April 2004).

⁵⁴⁹ Ibidem.

⁵⁵⁰ Speech by the representative of the Slovak Republic at the *High Level Expert Meeting on Eastern European Organised Crime*, The Hague, 29–30 November 2001.

⁵⁵¹ U.S. Department of State, *International Narcotics Control Strategy 2003*, March 2004, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2003/> (last verified on 15 April 2004). See also Drug Law and Health Policy Resource Network, *Drug Policy and Health in Slovakia*, 28 April 2002, available at: <http://www.drugpolicy.org/docUploads/SLOVAKIA.pdf> (last verified on 15 April 2004).

Organised crime groups in Slovakia also operate in the area of illegal migration⁵⁵² and **human trafficking**, mainly because of its borders with Austria, through which women from other SEE countries and the CIS are trafficked to Western Europe. The groups involved in trafficking operate not only on the Slovak – Austrian border, but also on the borders with Ukraine and the Czech Republic. Among the major destination countries are: Austria, Germany, the Netherlands, Switzerland, Spain and Japan. The victims entering the Slovak Republic come from Ukraine, Russia, Bulgaria, Bosnia and Herzegovina and Croatia. Slovakia is however mainly an origin country. The victims of these trafficking activities are women aged between 18 and 25 years old and also young Slovaks who are searching for better job opportunities and an escape from poor economic conditions.⁵⁵³ A new dimension to this phenomenon has been recently added by the discovery of trafficking in children (two cases in 2002). According to Slovak authorities, trafficking in persons is organised by international criminal groups, especially foreign mafia and pimp groups, which include Albanian, Macedonian, Yugoslavian, Turkish and Russian nationals. In addition, Slovak groups have established profitable forms of cooperation with Croatian, Czech and Hungarian groups and seem to maintain a physical presence in these countries. They lure victims by offering various types of jobs in foreign industrial countries (waitress, bartenders, hostess,...). This recruitment is done through legitimate agencies and personal contacts. Once in these countries the victims are deprived of their documents and forced into prostitution. The victims are transported by cars and airplanes. The Czech Republic and Germany are the main transiting routes for Japan, and other countries such as the Netherlands, France, Spain, Austria, Switzerland, Italy and Greece are also considered to be on the transportation routes of this trafficking.⁵⁵⁴

The **Arms trade** is also a serious cause of concern in Slovakia, which is considered to be a high risk country from this point of view.⁵⁵⁵ This is mainly due to legislative loopholes that impede effective monitoring of arms transiting the country. The law governing the arms trade, even after its mid-2002 amendments, permits weapon shipments that transit Slovakia to bypass licensing requirements. This imperfect legislation made Slovakia an origin and transit country for illegal arms deliveries to countries in conflict and other illegal destinations. In its 2003 report the Slovak

⁵⁵² 'In the Slovak Republic illegal immigrants are increasingly smuggled in by container lorries through 'green borders' where there are very few controls', in S. Kudrocova, 'Young Republic fears new crime', available at: <http://www.jmk.su.se/jmk/europe/8.html> (last verified on 15 April 2004).

⁵⁵³ Young gypsy girls are increasingly sold to western countries as 'exotic' prostitutes. See The Protection Project, *A Human Rights Report on Trafficking of Persons, Especially Women and Children*, March 2002, available at: <http://209.190.246.239/ver2/cr/Slovakia.pdf> (last verified on 15 April 2004).

⁵⁵⁴ IOM, *Trafficking in Human Beings in Slovakia. Country Assessment*, 2003, available at: http://www.iom.sk/publikacie/trafficking_in_human_beings-country_assessment.pdf (last verified on 15 April 2004). See also U.S. Department of State, *Trafficking in Persons Report*, June 2003, available at: <http://www.state.gov/g/tip/rls/tiprpt/2003/21275.htm> (last verified on 15 April 2004); Holt E., 'Slovakia: Anxiety over Growing Trade in Women', *Inter Press Service*, 1 October 2001, available at: <http://www.isiswomen.org/pub/we/archive/msg00049b.htm> (last verified on 15 April 2004).

⁵⁵⁵ Library of Congress – Federal Research Division, *Nations Hospitable to Organised Crime and Terrorism*, October 2003, available at: www.loc.gov/rr/frd/pdf-files/Nats_Hospitable.pdf (last verified on 16 April 2004), p. 46.

Information Service uncovered contacts between Slovak companies and international arms traffickers such as Victor Bout.⁵⁵⁶

Corruption, which is widespread in Slovakia, is an important *modus operandi* in the arms trade as it is in other organised criminal activities.⁵⁵⁷ The perception of corruptive practices among the public and professionals remains high and the sectors most affected by this phenomenon appears to be health care, education, police and judiciary⁵⁵⁸ as well as national and local politicians.⁵⁵⁹

Organized crime activities and the opportunities of using grey market channels have also led to a favourable **money-laundering** environment. The Slovakian economy is largely cash-based and combined with organised crime infiltration in non-transparent institutions, provides opportunities to launder money from narcotics trafficking.⁵⁶⁰ The geographic, economic and legal conditions that shape the money laundering environment in Slovakia are typical of those in other Central European transition economies. Organised criminal groups operating in the Slovak Republic **infiltrate** the legitimate economy, i.e. they use the proceeds from crime to manage legal activities and the sectors of the legitimate economy that seem to be at greatest risk of infiltration are the real estate sector, casinos and nightlife services. Assets derived from drug trafficking are laundered through the real estate sector⁵⁶¹ and in particular drug trafficking criminal groups usually run businesses like pubs, restaurants and companies.

Financial crimes such as fraud, tax evasion, embezzlement and conducting illegal business have been quite problematic for Slovak authorities. There are also new forms of **organised-economic crime**, notably tax evasion, illegal activities

⁵⁵⁶ 'The E.U., in an October 2002 report, noted that the country was not fully living up to its commitment to follow E.U. guidelines on arms exports'. See Human Rights Watch, *The Case for Further Reform. NATO and the European Union: Leverage for Change*, 2004, available at: <http://www.hrw.org/reports/2004/slovakia0204/5.htm> (last verified on 15 April 2004).

⁵⁵⁷ 'A diplomat told Human Rights Watch that corruption was among the main concerns with respect to arms export controls. Customs officials acknowledged that corruption is to be expected in the arms trade, and admitted that it was possible that customs officers were among those who might accept financial inducement to look the other way when they came across a suspect arms deal. Other bodies responsible for controlling arms transfers have also been accused of corrupt practices and other abuses of authority. In late 2002 attention focused on serious allegations, published in the British journal *Jane's Intelligence Digest*, that Slovakia's intelligence service (SIS) has itself participated in illicit arms deals, among other troubling activities'. Human Rights Watch, *Ripe to Reform: Stemming Slovakia's Arms Trade with Human Rights Abusers*, vol. 18, n. 2(D), February 2004, available at: http://www.hrw.org/reports/2004/slovakia0204/5.htm#_Toc61081352 (last verified on 15 April 2004).

⁵⁵⁸ Commission of the European Communities, *Comprehensive Monitoring report on Slovakia's Preparation for Membership*, 2003, available at: http://europa.eu.int/comm/enlargement/report_2003/pdf/cmr_sk_final.pdf (last verified on 15 April 2004). See also GRECO, *First Evaluation Round. Compliance Report on the Slovak Republic*, Strasbourg, 28 March 2003, available at: [http://www.greco.coe.int/evaluations/cycle1/GrecoRC-\(2003\)2E-Slovakia.pdf](http://www.greco.coe.int/evaluations/cycle1/GrecoRC-(2003)2E-Slovakia.pdf) (last verified on 15 April 2004).

⁵⁵⁹ M. Pisarova, 'Corruption Affairs Continues', in *The Slovak Spectator*, 12 August 2003, available at: <http://www.slovakspectator.sk/clanok.asp?vyd=2003047&cl=14578> (last verified on 15 April 2004).

⁵⁶⁰ Library of Congress – Federal Research Division, *Nations Hospitable to Organised Crime and Terrorism*, cit., p. 47.

⁵⁶¹ Speech by the representative of the Slovak Republic at the *High Level Expert Meeting on Eastern European Organised Crime*, The Hague, 29–30 November 2001.

connected with privatisation, the illegal penetration of the economy by foreign entities, trade in strategic materials, environmental crime and computer crime. The impact of such economic criminal activities remains significantly negative according to the officials and experts.⁵⁶²

2. LEGISLATION AND PRACTICES

2.1. CRIMINAL LAW

Slovakia has recently ratified all the relevant international and European instruments against organised crime: the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (28.05.1993), the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (01.09.2001), the 1999 Council of Europe Criminal Law Convention on Corruption (01.07.2002), and the 2000 United Nations Convention against Transnational Organised Crime and its Protocols (ratified on 03.12.2003).

Accordingly, the Slovakian Criminal Code has been amended to criminalize all the main forms of organized criminal activities and harmonize criminal definitions with European and international standards.

However, the translation of the international and European agreements into the national law does not seem to be accurate in all the instances. The main gap in the Slovakian legislation against organized crime appears to be related to the lack of provisions on the liability of legal persons.

Participation in a criminal association was introduced on 09.09.1999 by Amendment n. 183/1999 and is now dealt with by art. 185a CC, which describes participation in a criminal association as follows: '*Anyone who establishes or plans a criminal group, is a member, is acting for it or supports it, shall be punished by imprisonment from three up to ten years or by property forfeiture*'.

A detailed definition of an organized group can be found in art. 89 CC, which contains the definitions of concepts used in CC. According to art. 89 par. 27 CC a criminal group means: 'A criminal group is a partnership existing for a prolonged period of time and consisting of at least three offenders who have united to commit extremely serious criminal activities, the criminal act described in art. 252, or some of the criminal acts described in arts. 160 –162 with the objective:

- of obtaining a gain, or
- of infiltrating public authorities to obtain control or influence them in order to cover their own criminal activities,
- of infiltrating entrepreneur or non-entrepreneur authorities to obtain control or influence them in order to cover or to legalise their criminal activities or the incomes from those activities.

⁵⁶² U.S. Department of State, *International Narcotics Control Strategy 2003*, cit. See also P. Barecz, 'Corporate Crime on the Rise', in *Slovak Spectator*, 2001, available at: <http://www.slovakia.org/news/0101-3.htm> (last verified on 15 April 2004).

The definition of money laundering, included in art. 252 CC (*Legalization of the proceeds of crime*)⁵⁶³ since 10.10.1994, is very detailed and the overall money laundering regime provided for also by Act 367/2000 and Act 445/2002 has been the subject of a positive review by the Council of Europe experts (especially from the point of view of the removal of the previously existent financial threshold). However, some shortcomings were noticed in this assessment especially with regards to the mental element of the offence (knowledge standard).⁵⁶⁴

Drug related offences are tackled by arts. 186–188a CC,⁵⁶⁵ which provide stiff penalties and very comprehensive definitions for these crimes, which are in line with internationally accepted standards.⁵⁶⁶

The definition of trafficking in human beings has recently been updated in the Slovakian criminal code (art. 246 CC)⁵⁶⁷ in order to make it compatible with the ratified Palermo Protocol.

⁵⁶³ Art. 252 CC (Legalization of the proceeds of crime): (1) Any person who a) transfers in their own name or in somebody else's name, borrows/lends, carries out a bank transfer, imports, transports, transfers, rents or provides for himself/herself or for somebody else the proceeds of crime or other crime related property, or b) keeps, hides, conceals, uses, spends, destroys, modifies or damages/spoils the proceeds of crime or other crime related property with the intention to hide such a proceeds or other crime related things, to cover-up their criminal origins, the intention to use them for committing crime or their use for committing crime, to foil their seizure for the criminal proceedings purposes, or to foil their forfeiture or confiscation, shall be punished by imprisonment up to three years or by interdiction of profession/activity, or by the forfeiture of property, or by a fine. (2) The offender shall be punished by imprisonment for one to five years when he provides the major benefit for himself/herself or for somebody else by committing the criminal offence under subsection 1. (3) The offender shall be punished by the imprisonment for two to eight years when committing the crime under the section 1 as a member of organized group or when obtaining by such an act as a major benefit. (4) The offender shall be punished by the imprisonment for five to twelve years when committing the crime under section 1a) as a public official or b) as a member of an organized group carrying out its activities in a territory of several States, or when acting in connection with a group. (5) The offender shall be punished following subsection 4 also when obtaining for himself/herself or for somebody else by the act under subsection 1 a profit of great extent.

Article 252a CC: (1) Any person, who does not inform or report a) the facts indicating that other person commits the offence of legalisation of proceeds from crime according to the section 252 of the Penal Code, b) unusual business operation even though this duty is arising from his employment, profession, position or function, shall be liable to a term of imprisonment of two to eight years or to a sentence of the ban on professional activity or to a pecuniary penalty. (2) The act referred in paragraph is not punishable, if an offender cannot make the information or report unless to bring the danger of criminal prosecution to himself or other intimate person.

⁵⁶⁴ Council of Europe, Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV), *Second Round Evaluation Report on Slovak Republic*, Strasbourg, 8 April 2003, available at <http://www.coe.int> (last verified on 12.02.2004).

⁵⁶⁵ The text of art. 186–188a CC are available on the CD '*Legal Materials*' attached to this report.

⁵⁶⁶ See U.S. State Department, *International Narcotics Control Strategy Report 2002*, March 2003, available at <http://www.state.gov/g/inl/rls/nrcrpt/2002/html/17949.htm>.

⁵⁶⁷ Art. 246 (Trafficking in human beings): (1) Any person who entices, enlists, transfers to or receives another person from abroad with the intent to engage such person in sexual intercourse or other form of sex shall be liable to a term of imprisonment of three to ten years. (2) The same sentence shall be applicable to any person who entices, enlists, transfers to or receives another person or from abroad with the intent to exploit the person in forced labour, involuntary servitude, slavery or other similar forms of exploitation or wrongful taking of organs or tissues. (3) The offender shall be liable to a term of imprisonment of five to twelve years a) if he commits the offence referred to in paragraphs 1 or 2 against the will of another person, b) if he commits such an offence with the intention to engage another in

2.2. CRIMINAL PROCEDURE

Slovakian criminal procedure has been amended to harmonise it with these standards and provide new tools for law enforcement agencies and prosecution offices. Of particular relevance are the following provisions:

- the adoption of a wide range of special means of investigation for all serious crimes, such as interceptions of telephone conversations, fax and internet transmissions, audio and video recording of events taking place in private premises, controlled delivery;
- the adoption of a new witness protection regime since January 1999 (Law N. 256/1998 Coll. On Protection of Witnesses), according to which not only is physical protection provided, but also the use of communications technology such as video links;

As to the Slovakian confiscation regime, the Criminal Code recognizes the following concepts: 'forfeiture of property or of its part', 'seizure of property', 'forfeiture of thing and sequestered thing' (pending suit).

The Criminal Code enables the Court to impose a sentence of forfeiture of property or of its part on a perpetrator who has been found guilty of the crimes listed in the Penal Code. It also enables the Slovak court to enforce a foreign judgment imposing on the perpetrator the sentence of forfeiture of property or of its part, or render a decision of forfeiture of thing or of sequestration of a thing. Property cannot be 'confiscated' in the stage before the court's decision on forfeiture of property of before enforcement of a foreign judgment of forfeiture of property. Such property can only be seized for the purposes of the possible later forfeiture on the basis of the final decision of the court.

Under the conditions stipulated in an international agreement, and on the basis of a request from a foreign authority, the court can decide to provisionally seize the property belonging to an individual against whom a criminal prosecution is being conducted, or to seize that part of a property which is in the territory of the Slovak Republic. The extent of the seizure depends on the content of the legal assistance request. In the case of a request for seizure of property for the purposes of fulfilment of an obligation to pay damages or to ensure the execution of a supposed pecuniary punishment, or of a sentence of forfeiture of a part of property of a determined value, the property has to be seized which corresponds to the required value. If there is a requirement for the seizure of the whole property for the purposes of the supposed execution of the court's judgment of forfeiture of whole the property, the whole property of the accused person is seized. By virtue of

prostitution, c) if he commits such an offence against a person younger than eighteen years of age, d) if he commits such an offence as a member of an organised group, or e) if he gains for himself or another a considerable profit. (4) The offender shall be liable to a term of imprisonment of eight to fifteen years a) if through the commission of the offence referred to in paragraphs 1 or 2 he causes serious bodily harm, death or any other particularly serious consequence, b) if through the commission of such an offence he gains for himself or for another an extensive profit, or c) if he commits such an offence in connection with an organised group operating in several countries. (5) An offender shall be liable to a term of imprisonment of twelve years to fifteen years or an exceptional term of imprisonment if he commits the offence referred to in paragraphs 1 or 2 as a member of criminal group or he causes death of several persons.

art. 348 of the Code of Penal Procedure, the seizure affects the whole property of the accused, gains, incomes resulting from the seized property as well as the property acquired by the perpetrator after his/her accusation. But, it does not affect the means nor the things necessary for satisfaction of the needs of life of the accused, as well as of the dependent persons of which the accused is obliged to take care by virtue of law.

The property has to belong to the accused person. The seizure should not affect the things owned by persons other than the accused. If there is evidence that the accused carried out a false transaction/transfer of property to other persons in order to avoid the execution of a sentence of forfeiture of some parts of his/her property, the court may declare such transfers void under art. 39 of the Civil code no. 40/1964 Coll. This way, the property returns to the ownership of the accused and can be seized. According to the Code of Civil Procedure, such a property can also be seized by means of a preliminary ruling (temporary restraining order) by the court before the motion on declaration of nullity of property transfer is filed.

The court's decision on forfeiture of property does not depend on whether or not the accused has acquired some part of his/her property legally or illegally nor on what he/she has been convicted of, e.g. trafficking in drugs, or participation in organized crime or other criminal activity. The courts of the Slovak Republic are empowered to impose the sentence of forfeiture of property only for those criminal acts listed in the Criminal Code.

The court can sentence a person to the forfeiture of a thing when he/she is convicted of having committed any criminal offence. The forfeiture may only regard the thing that has been used for the commission of a crime, or the thing acquired by the commission of a crime, or obtained as a payment/remuneration for it, or a thing obtained by a perpetrator in exchange for a thing acquired the commission of an offence.

Currently, the 'Act on Property Source Proving' is being prepared. This act will shift the burden of proof onto the owner of property at a certain stage of proceedings. It is not expected to become a criminal law, but a legal civil rule. When the prosecutor comes to an opinion that the property of a citizen considerably exceeds his/her assessed income, the prosecutor can provide the court with the information collected, and the court would be empowered to order a citizen to prove the source of his/her property. If a citizen cannot prove its source, the unproved property would be forfeited by the State. Parliament is discussing the particular shape of that act. The act is expected to be approved later this year.

2.3. DATA PROTECTION RULES

Slovakia ratified the 1981 COE Convention on 13.09.2000. It has also concluded bilateral and multilateral agreements within the framework of police and judicial assistance including specific provisions for personal data protection with Hungary, Slovenia, and France. Most notably, there is an agreement with Europol regarding the transmission of data from and to Europol. Transborder data flows are also permitted to countries, which are not party to the 1981 COE Convention, but these transfers are strictly regulated by art. 23 of the 2002 Act on Personal Data Protection.

Art. 19 of the 1992 Slovakian Constitution provides the formal basis for the national legislation (Act n. 428 on Personal Data Protection of 2002).⁵⁶⁸ It does apply to law enforcement agencies and prosecution offices,⁵⁶⁹ even if exemptions are granted on the grounds of national security, public order, investigative secrecy, protection of economic, financial, currency, budgetary, and fiscal interests of the State. All these cases, however, must be regulated by law.

In particular, law enforcement agencies and prosecution offices are duty-bound to:

- make sure that personal data are not further processed in a way which is incompatible with the purposes for which data were collected, and
- apply security measures to these data.

The person ultimately responsible for the application of data protection provisions during the investigations conducted by police are individual judges and prosecutors, the head of the relevant office and members of the administrative staff.

The application of data protection rules is guaranteed by the presence of an independent supervisory state administration office, the 'Office for Personal Data Protection', established on the basis of an act. Its president is elected by parliament for five years. He is obliged to provide parliament with a report on the state of personal data protection at least twice a year. This authority has the power to bring violations of data protection rules to the attention of competent judicial authorities, to start proceedings and to control, guide, issue binding statements, review complaints and impose fines.

2.4. MULTILATERAL AND BILATERAL AGREEMENTS

a) Legislation

Slovakia has signed and ratified several international and European instruments for judicial and police cooperation: the European Convention on Extradition (1957 COE – ETS 024), the First additional Protocol to the European Convention on Extradition (1975 COE – ETS 086), the Second additional Protocol to the European Convention on Extradition (1975 COE – ETS 098), and the European Convention on Mutual Assistance in Criminal Matters (1959 COE – ETS 030) and its protocols.

⁵⁶⁸ The text of Slovakian Data Protection Law is available on the CD '*Legal Materials*' attached to this report.

⁵⁶⁹ Art. 178 (Unauthorized personal data processing): (1) Anyone who without authorization announces or reveals any data collected in connection with the public administration, shall be punished by imprisonment up to one year, or by profession/occupation ban, or by pecuniary punishment.(2) Anyone who, in connection with his/her own profession, occupation or position acquires the data about another person and he/she announces or makes them accessible without authorization, and by doing so he/she breaches the legal regulation on obligatory secrecy, shall be punished by the same punishment.(3) The offender shall be punished by the imprisonment up to two years or by profession/occupation ban, or by pecuniary punishment, if he/she: a) commits the acts under par. 1 or 2 and causes a serious detriment to the rights or justified interests of the person which the data concerns b) commits the act under para. 1 or 2 by means of the press, movies, radio, TV or some other similarly effective way c) commits the act under par. 1 by breaching his/her professional obligations or by breaching his/her obligations resulting from his/her position, profession or occupation.

In addition Slovak officers and prosecutors may make use of the international cooperation provisions provided for in the following specific instruments against organised crime: the United Nations Convention against Illicit Traffic of Drugs and Psychotropic Substances (1988), the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990, COE - ETS 141), the Criminal Law Convention against Corruption (1999 COE - ETS 173), and, since December 2003, the 2000 United Nations Convention against Transnational Organised Crime and its Protocols.

Slovakia also entered into bilateral and multilateral agreements regulating international judicial assistance with all SEE countries (with the exception of Moldova) and almost all the EU countries (with the exception of Denmark, Finland, Germany, Ireland, and Sweden).

Besides this international framework, Slovak prosecutors are obliged to respond to foreign assistance requests according to the provisions of the Code of Criminal Procedure. It does not impose *expressis verbis* any obligation, but it regulates the legal assistance procedure, and the obligation to act results from the officiality principle, i.e. the state monopoly of the power to initiate a proceeding and its duty to carry out all the acts provided for by criminal procedures by looking at both inculpatory and exculpatory elements. The currently valid (1961) Code of Criminal Procedure includes a Chapter named 'Legal Contacts with Foreign Countries'. There is stated in the art. 375: '*The regulations of this Chapter are only to be used in the case when the declared international agreement does not provide otherwise*'. Dual criminality is not required.

b) Practices

The following instruments of cooperation are often used by Slovak prosecutors: the European Convention on Mutual Assistance in Criminal Matters and its Protocols, the European Convention on Extradition and its protocol, and to the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. The United Nations Convention against Illicit Traffic of Drugs and Psychotropic Substances (1988) and the Criminal Law Convention against Corruption (1999 COE - ETS 173) are instead rarely used in the experience of the prosecutors interviewed.

Bilateral agreements are rarely used (in favour of the above-mentioned instruments of international cooperation).

2.5. DIRECT CHANNELS OF (POLICE)⁵⁷⁰ AND JUDICIAL COOPERATION

a) Legislation

The direct judicial cooperation between Slovak prosecutors and their respective counterpart colleagues in other countries are guaranteed by formal agreements with the following countries: the Czech Republic, Hungary, Poland, and Austria.

Slovak prosecutors, when directly contacted by colleagues from another country asking for assistance are obliged by law to forward the request for assistance to their competent colleagues, if they have not jurisdiction to implement the request. They are obliged to summon the witnesses and the experts, whose testimony under oath is requested for by colleagues of a foreign country. According to art. 433 para.1 CCP foreign authorities are not allowed to execute any acts of legal assistance in the territory of the Slovak Republic. According to para. 3 the presence of foreign authority representatives or other persons during the execution of an legal assistance act carried out by the Slovak authority is only possible with the consent of the prosecutor; prior consent is given by the court when the act is to be executed by that court. Slovak prosecutors are obliged by law to execute freezing or confiscation orders, search warrants, and to forward extracts of bank records and criminal records, when a specific request coming from a foreign authority is made. Slovak prosecutors are also obliged to provide assistance regarding all the special and ordinary means of investigation available in Slovakia, with the exception of the use of storefronts by investigative units. However, in the case of interceptions only a judge is entitled to issue an order on a prosecutor's motion concerning a serious crime or the acts prosecuted as part of the obligations of an international agreement (art. 88, CCP). Also with reference to audio or video recording and undercover operations it is necessary to follow the same procedure, but there is no specification about the type of crimes in the first case and the criminal offences must be premeditated in the second (art. 88, para. 4, CCP). With regard to covert methods such as controlled delivery, the prosecutor is entitled to issue the order when s/he suspects a delivery of drugs, toxics, radioactive materials, faux money, weapons, etc.

With regards to police direct cooperation no data are available.

b) Practices

Slovak prosecutors enter into direct contact with their foreign counterpart colleagues, despite the absence of agreements/legislation for direct judicial cooperation.

The other channel for direct cooperation consists of liaison magistrates, who are posted to the Czech Republic, Hungary, Poland, Austria, and The Netherlands. They provide direct links with foreign law enforcement authorities, help directly in the exchange of information and statistics and enhance the mutual understanding of the foreign judicial system.

⁵⁷⁰ Unlike the other country profiles, this paragraph of the Slovakian country profile refers only to judicial cooperation due to the lack of information on direct channels of police cooperation.

The practical possibilities for direct cooperation between Slovak prosecutors and their foreign counterparts may be impaired by the following factors:

- low level of training in investigating transnational organised crime among Slovak prosecutors;
- language problems, due to the absence of readily available translators;
- shortage of technical equipment, as Slovak prosecutors and police officers have neither a computer network (intranet) nor official e-mail accounts available in their office.

2.6. INTERNATIONAL AND REGIONAL ORGANISATIONS

a) Legislation

Interpol is the normal instrument used by Slovak police officers for identifying the competent counterparts in foreign countries.

Some cooperation is achieved with EJM, Eurojust and Europol, which are in the process of being set up due to the imminent entry of Slovakia into the European Union.

b) Practices

The degree of cooperation with Interpol and EJM is rated high by the expert, whereas this cannot be said of Europol and Eurojust, because they are still being set up.

3. GOOD PRACTICES

3.1. STRUCTURES SET UP FOR INTERNATIONAL COOPERATION PURPOSES

Both judges and prosecutors normally have to channel their requests for assistance through central authorities, i.e. the Ministry of Justice and the Prosecutor General's Office. The Prosecutor General's Office also has a department uniquely devoted to international cooperation.

The central authorities co-operate with the external interpreters listed in the register of sworn interpreters.

The time necessary to get an answer to an assistance request made to a foreign country is rather long (up to two months). This is a factor that greatly impairs the possibilities of cooperation through national centralised authorities.

3.2. DATABASES ON ORGANISED CRIME

No updated data available.

3.3. *MODI OPERANDI*/METHODS IN THE INTERNATIONAL COOPERATION PROCESS

Slovakia has enacted the following *modi operandi*/methods in order to speed up the international cooperation process:

- acknowledgement of all requests and written enquiries concerning the execution of requests;
- setting priority to requests which have clearly been marked 'urgent' by the requesting authority;
- explaining when the assistance requested is likely to be provided;
- ensuring that requests are submitted in compliance with the relevant treaty or other international arrangements;
- compliance with the formalities and procedures expressly indicated by the requesting member state.

4. EMERGING OBSTACLES

The analysis of legislation, practices and good practices relevant for international cooperation against organized crime has highlighted some shortcomings that are reported here for the sake of clarity, as they represent the background and rationale for the recommendations included in paragraph 5.

4.1. OBSTACLES IN LEGISLATION

1. The lack of provisions on liability of legal persons

One of the most evident gaps in the legal framework against organised crime in Slovakia is the lack of provisions related to liability of legal persons involved in criminal activities. This legal shortcoming is even more serious in the view of the high level of infiltration of organised criminals in legitimate activities and the exploitation of these covers to carry out criminal acts (e.g. use of casinos, real estate sector and so on to launder money).

4.2. OBSTACLES IN PRACTICES

2. The lack of operative instruments of direct cooperation of liaison magistrates

There are no liaison magistrates stationed by Slovakia in foreign countries, who might expedite the cooperation process. Furthermore, no joint investigation teams are set up to cooperate with foreign agencies. The absence of these operational instruments might impair full direct cooperation.

3. The inadequacy of technological means available to prosecutors

Computer networks (intranets) and official e-mail accounts are not available to all Slovakian prosecutors. The inadequacy of communication means might delay the cooperation process.

4. The low level of training in TOC cases

The level of training of prosecutors in investigating TOC cases is considered low. The lack of knowledge of the TOC phenomenon, techniques to fight it and cooperation mechanisms might be an obstacle in the fight against TOC and the full exploitation of cooperation possibilities.

5. The low level of practical cooperation with Europol and Eurojust

Whereas the level of cooperation with Interpol and EJM is regarded as high by the expert interviewed, the degree of cooperation with Europol could not be rated because of its recent introduction, whereas Eurojust is considered to have achieved only a low level of cooperation with Slovakia. These regional organisations could enhance data exchange and cooperation between European countries, but the lack of protocols for cooperation impedes this form of cooperation.

4.3. OBSTACLES IN GOOD PRACTICES

6. The lengthiness of assistance procedures through central authorities

It takes up to two months to get an answer to an assistance request made to a foreign state. Despite the deployment of fax, the email system is still not used for communicating and a national standard form that prosecutors use in order to ask for international assistance does not exist. These deficiencies might be the cause of the lengthiness of the time required to receive answers to assistance requests.

7. The lack of common criminal databases

No common criminal database has yet been established in Slovakia on OC. The absence of such instruments impedes the rapid exchange of information with foreign colleagues on OC groups.

8. The scarce adoption of good practices in the international cooperation process

Slovakia has not yet adopted a large part of the good practices indicated by European and international standards on international cooperation, and specifically:

- providing the requesting authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing the request;
- providing the requested authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for issuing the request;
- giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authorities how the difficulty may be overcome;
- explaining the reasons for the urgency or deadline;
- direct sending of procedural documents;
- spontaneous exchange of information;
- joint operational meetings.

These omissions might slow down the cooperation process between Slovakia and other countries, as these practices have proven to be very important to carry out effective international assistance.

4.4. OTHER OBSTACLES MENTIONED BY THE EXPERTS

9. Obstacles to judicial assistance

The experts interviewed mentioned the following as the most significant obstacles to *judicial assistance* received by Slovakia from other countries in pre-trial investigations into transnational organised crime:

- lack of response to requests for assistance;
- delay of response to requests for assistance;
- differences in the criminal justice systems (common law, continental law);⁵⁷¹
- language problems.

⁵⁷¹ In the view of the expert, in cases of differences between the criminal justice system of the requested state, this should precisely follow the requirements stated in the rogatory letter, paying particular attention to the stage of the proceedings (the acts of assistance are often required to be used within the trial proceedings, while the request is elaborated by and sent from the preliminary proceedings authority).

5. RECOMMENDATIONS

5.1. RECOMMENDATIONS ON LEGISLATION

Recommendation n. 1

'Establishing liability of legal persons for OC activities'

Background and rationale

One of the most evident gaps in the legal framework against organised crime in Slovakia is the lack of provisions related to liability of legal persons involved in criminal activities. This legal shortcoming is even more serious in the view of the high level of infiltration of organised criminals in legitimate activities and the exploitation of these covers to carry out criminal acts (e.g. use of casinos, real estate sector and so on to launder money).

Recommendation

Action should be taken to enact provisions dealing with the responsibility of legal persons.

Implementing measures

- Slovakian legislators should include in the criminal code, or in the special legislation against organised crime, provisions on liability of legal persons engaging in organised crime activities.
- Alternatively, a form of administrative liability for legal persons should be sought in order to make legal persons accountable for their participation in organised crime activities.

5.2. RECOMMENDATIONS ON PRACTICES

Recommendation n. 2

'Enhancing the channels of direct judicial and police cooperation'

Background and rationale

There are no liaison magistrates stationed by Slovakia in foreign countries, who might expedite the cooperation process. Furthermore, no joint investigation teams are set up to cooperate with foreign agencies. The absence of these operational instruments might impair full direct cooperation.

Recommendation

Action should be taken to enhance direct channels of judicial cooperation.

Implementing measures

Slovakia should post liaison magistrates abroad, especially in the countries where most of the requests for assistance are addressed.

Recommendation n. 3

'Improving technological equipment available to prosecutors'

Background and rationale

Computer networks (intranets) and official e-mail accounts are not available to all Slovakian prosecutors. This inadequacy of communication might delay the cooperation process.

Recommendation

Action should be taken to improve the technological equipment available to prosecutors investigating TOC cases.

Implementing measures

All prosecutors investigating TOC cases should be provided with a computer network and an official e-mail account by their agency.

Recommendation n. 4

'Improving the level of training in investigating TOC of prosecutors'

Background and rationale

The level of training of prosecutors in investigating TOC cases is considered low. The lack of knowledge of the TOC phenomenon, techniques to fight it, and cooperation mechanisms might be an obstacle to the fight against TOC and the full exploitation of cooperation possibilities.

Recommendation

Action should be taken to provide training in investigating TOC.

Implementing measures

Training courses and seminars should be organised on the most relevant forms of TOC.

Recommendation n. 5

'Promoting cooperation with international and regional organisations'

Background and rationale

Whereas the level of cooperation with Interpol and EJM is regarded as high by the expert interviewed, the degree of cooperation with Europol could not be rated because of its recent introduction, whereas Eurojust is considered to have achieved only a low level of cooperation with Slovakia. These regional organisations could enhance data exchange and cooperation between European countries, but the lack of practical cooperation impedes this.

Recommendation

Action should be taken to promote cooperation with international and regional organisations.

Implementing measures

- Cooperation protocols and contacts with Europol/Eurojust should be made more operational;
- Training courses and seminars should be organised for middle level officers to enhance knowledge of the possibilities of cooperation with relevant international and regional organisations.

5.3. RECOMMENDATIONS ON GOOD PRACTICES

Recommendation n. 6

'Improving cooperation capacities of central authorities'

Background and rationale

It takes up to two months to get an answer to an assistance request made to a foreign state. Despite the deployment of fax, the email system is still not used for communicating and a national standard form that prosecutors use in order to ask for international assistance does not exist. These deficiencies might be the cause of the lengthiness of the time required to receive answers to assistance requests.

Recommendation

Action should be taken to speed up the procedures to get an answer to an assistance request.

Implementing measures

- Modern means of communication (e.g. email) should be deployed for communications related to international assistance.
- A national standard form should be used in order to facilitate the process of requesting and observing the relevant international treaties.

Recommendation n. 7

'Establishing common and national criminal databases and rendering them accessible to foreign officers investigating TOC cases'

Background and rationale

No *common* criminal database has yet been established in Slovakia on OC. The absence of such instruments impedes a rapid exchange of information with foreign colleagues on OC groups.

Recommendation

Action should be taken to establish a national database and render it accessible to foreign officers investigating TOC cases.

Implementing measures

Slovakian authorities should consider establishing a common database on OC in order to exchange information with the foreign countries.

Recommendation n. 8

'Enhancing *modi operandi*/methods in the international cooperation process'

Background and rationale

Slovakia has not yet adopted a large part of the good practices indicated by European and international standards on international cooperation. These omissions might slow down the cooperation process of Slovakia with other countries, as these practices have proven to be very important to carry out effective international assistance.

Recommendation

Action should be taken to enhance the *modi operandi*/methods in the international cooperation process.

Implementing measures

Slovakian authorities dealing with mutual legal assistance should adopt the following good practices:

- providing the requesting authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing the request;
- providing the requested authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for issuing the request;
- giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authorities how the difficulty may be overcome;
- explaining the reasons for the urgency or deadline;
- direct sending of procedural documents;
- spontaneous exchange of information;
- joint operational meetings.

8.11.

SLOVENIA⁵⁷²

INTRODUCTION

The Republic of Slovenia is a relatively small state neighbouring Croatia, Italy, Hungary and Austria. It was internationally recognised as an independent State in 1991 following the break up of the Socialist Federal Republic of Yugoslavia. It has been a UN member since 22.05.1992, a COE member since 14.05.1993, and an OSCE member since 24.03.1992. Slovenia will become an EU member on 1 May 2004 and is applying for full Schengen membership in 2005.⁵⁷³

The Criminal Code was formally enacted on 1995 and amended in 1999 (Official Gazette n. 63/94 and 23/99). The Code of Criminal Procedure was formally enacted on 1995 and amended in 1999 (Official Gazette n. 63/94 and 72/98).

The Slovenian criminal justice system has a mixed nature as it has elements belonging to both the inquisitorial tradition and the accusatorial systems. Typical of the inquisitorial tradition are the following elements: the proceedings are mainly written, the phases (preliminary proceedings and trial) are separate with the need of repeating all the acts of the former in the latter. Moreover, despite attempts to render the role of the judge more jurisdictional, in the preliminary proceedings the role of the judge is still investigative. Accusatorial elements have been recently introduced, such the cross-examination, but the process of reform is still ongoing.⁵⁷⁴

In regards to the law enforcement organisation, there is only one police force, the National Police. The following Special investigative units have been established, which deal with organised crime cases or criminal activities typically related to organised crime:

- the Organized Crime Section at the national level;
- the Organized Crime Divisions at the regional level;
- the Economic Crime Section and its Financial Crime Division (under the General Police Directorate – Ministry of Interior) called the Office Of Money Laundering

⁵⁷² The Slovenian country profile was based, among other materials, on the answers given by the following experts: Mr. Andrej Baraga, Circuit State Prosecutor, Supreme State Prosecution Office of the Republic of Slovenia, Ljubljana; Mr. Uros Lavric, Criminal Investigation Inspector for Special Tasks, Ministry of Interior, General Police Directorate, Ljubljana. They answered to two questionnaires: one in autumn 2002 and one in summer 2003. The final revision and updating was carried out by Mr. Uros Lavric in May 2004.

⁵⁷³ Detailed information on the main Slovenian democratic institutions and its judiciary is available at: <http://www.legislationline.org> (last verified on 12 February 2004).

⁵⁷⁴ B. Pavišić and D. Bertaccini, *Le altre procedure penali. Transizioni dei sistemi processuali penali*, Vol. I, G. Giappichelli Editore, Torino, 2002, p. 363–397.

Prevention, which is in charge of conducting investigations into money laundering cases;⁵⁷⁵

- a Joint Police and Customs Group to deal with drug trafficking;
- a Group of State Prosecutors for Special Matters specifically for the prosecution of organised crime cases (Law on State Prosecution, as modified with effect from 8 July 1999).

1. THE ORGANISED CRIME SITUATION

1.1 FEATURES OF THE ORGANISED CRIMINAL GROUPS

The strategic position of Slovenia, located between two traditional West European countries and two ex-socialist states, makes it a potential international centre for the planning and execution of criminal activities. The development of organised crime in Slovenia is characterised, as elsewhere, by the high degree of organisation of its perpetrators, by the specialisation of work inside individual crime associations, by conspiracy and by profit making.⁵⁷⁶

The characteristics of contemporary crime are reflected in Slovenia in almost every form.⁵⁷⁷ Classical crime has always played the leading role, whereas commercial and organised crime are constantly increasing⁵⁷⁸ and the biggest problem are criminal associations in the field of illicit drug trafficking, followed by groups taking part in the organisation of illegal migration.⁵⁷⁹ During 2002 organised criminal activities dealt with by the police decreased (40.4 % less than previous year) and this is the result of the stricter application of the criteria for the identification of organised crime in accordance with the definition of Europol.⁵⁸⁰

The structure of the groups is mainly project based but the formation of hierarchically organised associations is emerging. There are also indications of network structures where the Slovenian 'cells' are only responsible for the execution of a certain part of the deal, most frequently the organisation and execution of logistical tasks.

⁵⁷⁵ A detailed description of role of Office for Money Laundering Prevention is available at: <http://www.sigov.si/mf/angl/uppd/naloge.htm> (last verified on 29.04.2004).

⁵⁷⁶ K. Drago, 'Organised Crime in Slovenia', paper presented at the *Fourth Interpol Conference on Organised Crime*, Lyon, December 13–14, 1994.

⁵⁷⁷ R. Bohinc, Minister of Interior, Slovenia 'Ways and Forms of Prevention and Persecution of Organized Crime and Illegal Migrations in view of Slovenia's Strategy for Accession to the European Union', in Brice De Ruyver, Gert Vermeulen, Tom Vander Beken (Eds.), *Strategies of the EU and the US in Combating Transnational Organized Crime*, Institute for International Research on Criminal Policy (IRCP), Ghent University, Maklu, 2002, p. 35.

⁵⁷⁸ Ibidem.

⁵⁷⁹ 'In the year 2000, 35.743 aliens, or 91 per cent more than in the same period in 1999, were dealt with due to illegal crossing of the state border. They were mainly nationals of Iran, followed by nationals of Romania, Turkey, Bangladesh and China'. R. Bohinc, cit., p. 36.

⁵⁸⁰ Ministry of Interior, *Annual Report on the Work of the Police 2002*, available at: <http://www.policija.si/en/doc/report2002.doc> (last verified on 29 April 2004).

The criminal groups mainly operate on a national and transnational scale, largely in Bosnia and Herzegovina, Croatia, FYRoM, Yugoslavia, Austria and Italy. They cooperate with each other and also with groups based abroad, especially in Bosnia and Herzegovina, Croatia, FYRoM, Yugoslavia, Turkey, Austria, Italy and the United Kingdom. Slovenian authorities believe that the borders with Italy, Austria, Hungary and Croatia and the short Adriatic coastline make Slovenia a potential target for Albanian, Turkish and Italian criminal organisations trying to smuggle heroin into Western Europe via the 'Balkan Route'. There are also a number of organised criminal groups made up exclusively of non-nationals. Albanian nationals are considered responsible for the main part of heroin trafficking in 2003, and recent trends show Serbian nationals becoming more involved in this trafficking. Serbian and Croatian nationals appear also to be involved in the cocaine trafficking.⁵⁸¹

1.2. ACTIVITIES OF THE ORGANISED CRIMINAL GROUPS

Slovenia represents a geographical important link between countries of origin and countries of destination for drugs⁵⁸² and illegal migrants. In Slovenia the number of criminal activities is growing, the organisation of criminals at a national and international level is intensifying and the ruthlessness with which they pursue their goals is increasing. Organised criminal groups operating in the country are involved in different activities.

Slovenia is located on the so-called Balkan route⁵⁸³ for **narcotics**, through which heroin is the substance primarily transported. Despite this favourable geographical location the country is not a major producer or transit state.⁵⁸⁴ The heroin most often comes from Hungary and Croatia. Slovenia's main cargo port, Koper, located on the North Adriatic, is also viewed as a potential transit point for South American cocaine and North African cannabis destined for Western Europe countries.⁵⁸⁵ Also marihuana cultivated in BiH and precursor chemicals for synthetic substances are trafficked through Slovenia.⁵⁸⁶

⁵⁸¹ U.S. Department of State, *International Narcotics Control Strategy 2003*, March 2004, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2003/> (last verified on 29 April 2004).

⁵⁸² Slovenia is frequently used as a transit country in the illicit drug trade, en route from producer countries (Turkey, Albania, Colombia) to Western Europe.

⁵⁸³ 'The extent of [drug] crime records remained at the same level as the previous year, contrary to the ten-year trend of increase'. Ministry of Interior, Annual Report on the Work of the Police 2002, available at: <http://www.policija.si/en/doc/report2002.doc> (last verified on 29 April 2004).

⁵⁸⁴ 'The Government of Slovenia (GoS) is aware that Slovenia's geographic position makes it an attractive potential transit country for drug smugglers, and it continues to pursue active counternarcotics policies'. See U.S. Department of State, *International Narcotics Control Strategy 2003*, March 2004, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2003/> (last verified on 29 April 2004).

⁵⁸⁵ See OCSE, *11TH Economic Forum. Statement of Slovenia*, Prague, 20–23 May 2003, p. 3–4, available at: http://www.osce.org/documents/sg/2003/05/79_en.pdf (last verified on 29 April 2004). The Slovenian authorities believe that South American countries are making large-scale use of the north Adriatic ports of Rijeka in Croatia, Koper in Slovenia and Trieste in Italy as intermediate transit points for cocaine bound largely for Western Europe.

⁵⁸⁶ U.S. Department of State, *International Narcotics Control Strategy 2003*, cit.

Slovenia must also cope with **illegal crossings** of its borders and **trafficking in persons**, especially women and children. Although some years ago the majority of illegal border crossings regarded migrants from the near and far East, in recent years the situation has changed radically and now, according to US government sources, the largest category of persons crossing Slovenia's borders illegally are female citizens from South Eastern, Eastern and Central Europe (often in possession of forged passports), who usually work in BiH as prostitutes or are trafficked to Western Europe, Japan, Mexico, the United States and Canada.⁵⁸⁷ It should be mentioned, though, that Slovenian police sources do not confirm these patterns.

Trafficking in persons is an extremely well organised illegal activity the leaders of which remain abroad and use Slovenian citizens to achieve their goals. Typically the women who are destined to stay in Slovenia enter the country on work visas as nightclub dancers. Prostitution is usually organised under the cover of performing arts groups. Foreign women destined for western countries are temporarily locked up in apartments and their documents are confiscated by the traffickers.⁵⁸⁸ Children are also increasingly trafficked for sexual purposes, begging, stealing, selling small things and smuggling of drugs.⁵⁸⁹

With regards to **arms trafficking**, it is connected with the 1991 war in the country, as well as in some of the neighbouring states, which were formerly part of Yugoslavia. Since the beginning of the conflict only one thing has changed: the direction of the weapons being smuggled. Whereas in the years 1990 to 1992 the majority of clandestine shipments were directed towards the war area, since 1993 weapons appear to originate in those areas and are now being shipped to criminal organisations in Western Europe.⁵⁹⁰

Increasing numbers of **car thefts** occur in the country, which is no longer just a transit point for stolen vehicles.⁵⁹¹ Slovenia is a transit country for stolen vehicles and one of Slovenia's chief problems in its fight against organised international vehicle trafficking derives from its small geographical size, which enables perpetrators to flee the country in a very short time – two hours at the most. Of the nine criminal associations identified in 2000 as dealing in car theft and smuggling

⁵⁸⁷ U.S. Department of state, *Trafficking in Persons Report*, June 2003, available at: <http://www.state.gov/g/tip/rls/tiprpt/2003/21275.htm> (last verified on 29 April 2004). The main hubs for trafficking to Italy are Trieste and the Julienne Alps.

⁵⁸⁸ The Protection Project, *Slovenia – A Human Rights Report on Trafficking of Persons, Especially Women and Children*, March 2002, available at: <http://209.190.246.239/ver2/cr/Slovenia.pdf> (last verified on 29 April 2004).

⁵⁸⁹ See OCSE, 11TH Economic Forum. *Statement of Slovenia*, cit.

⁵⁹⁰ In 2002 the Slovenian police dealt with 175 criminal offences of unlawful manufacture and trade in weapons and explosives, of which 19 were the result of organised crime. The quantity of weapons and explosives seized decreased in comparison to 2001 when 50 tons of weapons were found in the port of Koper. See Ministry of Interior, *Annual Report on the Work of the Police 2002*, available at: <http://www.policija.si/en/doc/report2002.doc> (last verified on 29 April 2004).

⁵⁹¹ In the majority of cases the perpetrators simply drive stolen vehicles across the state border, where they are picked up by the next link in the chain. These stolen vehicles can be registered without difficulty in countries geographically distant from Central Europe, or in countries where, due to armed conflict, it is impossible to verify their provenance through still formally functioning state institutions.

in Slovenia, more than 95% have connections with criminal organisations from the former Yugoslavia.⁵⁹²

Slovenia is not a major **money laundering** country. However, according to US government sources, organised crime activities produce a large amount of illicit proceeds to be laundered, among which the major sources of dirty money are narcotics trafficking *in primis* and then auto theft, fraud, trafficking in weapons, illegal immigration, currency and securities counterfeiting, tax evasion, tax and VAT fraud and corruption. Organised crime is also involved in the predicate offences and exploits the developed banking system to launder the proceeds. Other money laundering operations occur through currency exchange houses, casinos, real estate transactions and by the physical transport of currency across borders.⁵⁹³ It must be mentioned, however, that these money laundering patterns are not confirmed by Slovenian police sources.

Although Slovenia is one of the Central and Eastern European countries that seems less affected by **corruption**,⁵⁹⁴ some connections between trafficking in human beings and corrupted officials have been alleged.⁵⁹⁵ In addition, the perception of corruption by the public is different from official statistics and regard corruption as more widespread. Slovenia seems to be vulnerable especially in the public procurement sectors.⁵⁹⁶

2. LEGISLATION AND PRACTICES

2.1. CRIMINAL LAW

Slovenia has signed and ratified most of the relevant international and European instruments against organised crime: the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (succession on 06.07.1992), the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ratification on 01.08.1998), the 1999 Council of Europe Criminal Law Convention on Corruption (ratification on

⁵⁹² Speech presented by the representative of the Republika Slovenija at the *High Level Export Meeting on Eastern European Organised Crime*, The Hague, 29–30 November 2001.

⁵⁹³ U.S. Department of State, *International Narcotics Control Strategy 2003*, March 2004, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2003/> (last verified on 29 April 2004).

⁵⁹⁴ GRECO (Group of States against corruption), *First Evaluation Round: Evaluation Report on Slovenia*, adopted by the GRECO at its 4th Plenary Meeting (12–15 December 2000), Strasbourg, 15 December 2000, available at: <http://www.greco.coe.int>. See also B. Simeunovic-Patic., 'Experiences of the International Crime Victim Survey in Slovenia, Croatia, Macedonia and Yugoslavia', in *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 10, n. 2–3, 2002, p. 124.

⁵⁹⁵ Council of Europe, Economic Crime Division, *Trafficking in Human Beings and Corruption*, Project PACO Networking, Portoroz, Slovenia, 19–22 June 2002, p. 58, available at: [http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Combating_economic_crime/Programme_PACO/PACOTP28rev\(PortorozFinal\).pdf](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Combating_economic_crime/Programme_PACO/PACOTP28rev(PortorozFinal).pdf) (last verified on 29 April 2004).

⁵⁹⁶ Commission of the European Communities, *Comprehensive Monitoring Report on Slovenia's Preparation to Membership*, 2003, p. 13, available at: http://europa.eu.int/comm/enlargement/report_2003/pdf/cmr_si_final.pdf (last verified on 29 April 2004).

01.07.2002) and, very recently (09.04.2004), the 2000 United Nations Convention against Transnational Organised Crime and its protocols.

Accordingly, the Slovenian Criminal Code criminalizes all the main forms of organized criminal activities: participation in a criminal association (art. 297, *Association for committing crimes*),⁵⁹⁷ money laundering (art. 252, *Money laundering*),⁵⁹⁸ drug trafficking (art. 196, *Drug trafficking*),⁵⁹⁹ trafficking in human beings (art. 387, *Enslavement*).⁶⁰⁰ Furthermore, Slovenia has enacted a new law on liability of legal persons (Liability of Legal Persons for Criminal Offences Act, Official Gazette n. 59/99 and 12/2000), which regulates a specific criminal type of liability for all the above-mentioned criminal activities.

In view of this very comprehensive international and national legal framework, the correspondence of the provisions of the Slovenian criminal code to the international and European standards appears to be uniform for almost all the relevant organised criminal activities. In fact, the legislative provisions for the offences of money laundering and drug trafficking (and related policy initiatives) have been praised for their adherence to the standards,⁶⁰¹ and the organised crime definition, even if

⁵⁹⁷ Art. 394 (Association for committing crimes): (1) Whoever founds an association for committing the crimes, punishable by more than 5 years of imprisonment, shall be sentenced to up to 3 years in prison (sole foundation). (2) Whoever becomes a member of such an association, shall be sentenced to up to 1 year in prison (sole participation).

⁵⁹⁸ Art. 252 (Money laundering): (1) Whoever accepts, changes, holds, disposes or uses in economical activity or in another way defined by law, conceals money or goods by laundering or attempts to conceal its origin, shall be punished with imprisonment up to 3 years. (2) Whoever commits an act, mentioned in the above paragraph and is in the same place a perpetrator or a participant to the predicate offence, shall be punished with the same sanction, as above. (3) If money or goods, mentioned in the above two paragraphs, represent a great value (more than fifty average monthly salaries) one shall be punished with imprisonment up to 8 years and a fine. (4) If the above mentioned offences are executed by multiple persons, associated for executing those crimes one shall be punished with imprisonment up to 10 years and a fine. (5) Whoever could have or should have known, money or goods were obtained by crime and commits an offence from the first, second or third paragraph shall be punished with imprisonment up to 2 years. (6) Money and goods from above articles shall be seized.

⁵⁹⁹ Art. 196 (Drug trafficking): (1) Whoever unlawfully produces, adapts, sells, offers, or, for the purpose of further selling, buys, stores or transports or in some other way trades with substances, which are defined as drugs, shall be punished with imprisonment from 1 to 10 years. (2) If above mentioned offence is executed by multiple persons in a criminal association or a perpetrator has organized a network of traders, one shall be punished with a minimum prison term of 3 years (=if only a minimal term is mentioned, maximum is 15 years per offence). (3) Whoever without an authorization produces, acquires, holds or enables the use of the equipment, materials or preliminary substances, knowing they will be used for a drug production, shall be punished by imprisonment from 6 months to 5 years. (4) the drugs and means for their production and transportation means, adapted for transportation and hiding of drugs, shall be seized.

⁶⁰⁰ Art. 387 (Enslavement): (1) Whoever, in violation of international law, brings another person into slavery or a similar condition, or keeps another person in such a condition, or buys, sells or delivers another person to a third party, or brokers the buying, selling or delivery of another person, or urges another person to sell his freedom or the freedom of the person he supports or looks after, shall be sentenced to imprisonment for not less than one and not more than ten years. (2) Whoever transports persons held in the condition of slavery or in-similar condition from one country to another, shall be sentenced to imprisonment for not less than six months and not more than five years. (3) Whoever commits the offence under in the first and the second paragraphs of the present article against a minor shall be sentenced to imprisonment for not less than three years.

⁶⁰¹ Council of Europe, Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL), *Second Round Evaluation Report on Slovenia*, Strasbourg, 2002, available at <http://www.coe.int> (last verified on 16 January 2004); U.S. State Department, *International Narcotics Control*

drawn from criminological terms rather than legal, is considered to be up to international standards. At the same time, however, the criminal code provisions on trafficking in persons do not fully cover the scope of criminal offences provided for in the Palermo Protocol. On this regard Slovenia is in the process of introducing a new article 387a CC, which will complement article 387 CC on slavery in accordance with the international standards.⁶⁰²

2.2. CRIMINAL PROCEDURE

Slovenian investigative apparatus is provided with all the modern special means of investigation for all serious crimes: interceptions (of telephone conversations, fax transmission and Internet transmission), audio or video recording of events taking place on private premises, undercover operations, use of storefronts by investigative units and covert methods such as controlled delivery (only for drug trafficking related cases). Interceptions and audio or video recording are decided on by both the prosecutors and the courts, while the other investigative means may be decided by the prosecutor alone or even a high ranking official in the Ministry of Interior, without the intervention of a court. Provided the Slovenian criminal procedure code has been respected, the material intercepted can be used as evidence during a criminal trial.

There are however two main gaps in the legal framework for investigations:

- the absence of a comprehensive witness protection law, which is currently limited to the protection of privacy and identity during criminal proceedings (art. 240 CCP);
- a limitation of the confiscation regime, which does not include the institute of the 'reversal burden of proof'.⁶⁰³

Strategy Report 2002, March 2003, available at <http://www.state.gov/g/inl/rls/nrcrpt/2002/html/17949.htm>.

⁶⁰² Draft art. 387a (Trafficking in human beings): (1) Whoever, for the reasons of prostitution or other forms of sexual abuse, servitude or trafficking in parts of human body, buys, takes over, lodge, transfers, sells, hands over, or other ways has another person in disposal, shall be sentenced to imprisonment for not less than 1 year and not more than 10 years. (2) If the offence from the previous paragraph is committed against a minor, or with use of force, threat or with infatuating, kidnapping or by abuse of position, the perpetrator shall be punished with at least 3 years of imprisonment. (3) Whoever commits the offences from paragraphs 1 and 2 in an organised criminal group, or if major property benefit was acquired, shall be punished to the same extent as in paragraph 2. (Unofficial translation of the working draft quoted from G. Staberock, *Opinion and Commentary on Criminal Law Reforms in South-Eastern Europe applicable in Slovenia*, LARA Project – Criminal Law Reform Against Trafficking in Human Beings, March 2003, p. 6. Available at the website of the Council of Europe (last verified on 18 February 2004).

⁶⁰³ A part from this evidentiary limitation Slovenian, confiscation regime is fully consistent with the international and European standards, because it has an 'all crime approach', it includes both property and value confiscation, and conviction is not required for it to apply.

2.3. DATA PROTECTION RULES

The Slovenian legal framework on personal data protection (Personal Data Protection Act, Official Gazette n. 59/1999, amended in 2001) is very recent and comprehensive.⁶⁰⁴ It also applies, with some specifications, to law enforcement agencies and prosecution offices. Exemptions may, however, be granted on the grounds of national security, public order, and investigative secrecy (art. 23, Personal Data Protection Act).⁶⁰⁵ In general, however, law enforcement agencies and prosecution offices are duty-bound to make sure that personal data are not processed in a way that is incompatible with the purposes for which the data were originally collected. Article 13 of the Personal Data Protection Act lists the security measures that must be taken to accomplish this purpose.⁶⁰⁶

Besides being a member of the 1981 COE Convention since 1994, Slovenia has also concluded bilateral and multilateral agreements in the framework of police cooperation, including specific provisions for personal data protection, with the following countries: Croatia, Czech Republic, FYRoM, Serbia and Montenegro, Romania, Austria and Germany.

Most notably, Slovenia is one of the few SEE countries that has concluded a formal agreement with Europol regarding the transmission of personal data.

Slovenia has not ratified the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows (ETS 181 - 2001). However, the national legislation does provide regulation on these matters, which is consistent with European standards. In particular, the Inspectorate for Personal Data Protection is designed as the supervisory authority dealing with the protection of personal data in Slovenia. It is a body within the Ministry of Justice and has the

⁶⁰⁴ The text of Slovenian Data Protection Law is available on the CD '*Legal Materials*' attached to this report.

⁶⁰⁵ Art. 23 (Restriction on the rights of an individual): The rights of the individual in connection with the protection of personal data may be restricted, in instances provided for by law, for the needs of national security, defence, public safety, the prevention, detection and prosecution of criminal acts or violations of ethical norms in certain professions, fiscal, budgetary and tax affairs, the monitoring of public safety, and the protection of the subject of the data or the rights and freedoms of others to an extent necessary in order to achieve the purpose for which the restriction has been imposed, except when connected to national, racial or other origins, political, religious and other beliefs, education, medical condition (except contagious diseases), and sexual behaviour. The preceding paragraph notwithstanding, the right to view the catalogue of databases and to request court protection may not be restricted.

⁶⁰⁶ Art. 13 (Security of personal data): The security of personal data shall include organisational and appropriate logistic and technical procedures and measures for securing personal data, preventing the accidental or intentional unauthorised destruction of data, or changes to or loss of data, as well as any unauthorised data-processing, by: 1. protecting premises, hardware (including input-output units) and system software; 2. protecting the applications software for personal data-processing; 3. preventing unauthorised access to personal data during transfer, including during transfer by means of telecommunications networks; 4. making it possible to establish when individual personal data items have been used or entered into a database and by whom, for the period when the legal protection of the rights of an individual can be exercised against any unauthorised imparting of personal data. In instances of data-processing accessible by telecommunications networks, the hardware, system software and applications software must ensure that the processing of the data contained in databases is conducted within the scope of the authorisations of the personal data user.

power to investigate violations of data protection rules, to bring them to the attention of competent judicial authorities, and to start legal proceedings.

Transborder data flows are regulated by both the Code of Criminal Procedure (art. 523), which stipulates what kind of personal data can be included in a demand for extradition, and by the Personal Data Protection Act (art. 24). The latter allows the possibility of transferring data abroad, if the country to which the data is being taken has a system of personal data protection that covers foreign citizens as well, or if personal data are imparted based on international treaties and agreements.

2.4. MULTILATERAL AND BILATERAL AGREEMENTS

a) Legislation

A variety of sources (i.e. international and European conventions, multilateral and bilateral agreement and national law) regulate the way in which Slovenia provides and receives assistance in pretrial investigations into transnational organised cases led by police officers and by prosecutors or investigating judges.

Slovenia signed and ratified all the international and European instruments for judicial and police cooperation, which are included in the framework of reference of this report: the European Convention on Extradition (1957 COE – ETS 024), the First additional Protocol to the European Convention on Extradition (1975 COE – ETS 086), the Second additional Protocol to the European Convention on Extradition (1975 COE – ETS 098), and the European Convention on Mutual Assistance in Criminal Matters (1959 COE – ETS 030). Additionally, Slovenian police officers and prosecutors may make use of the international cooperation provisions provided for in the following specific instruments against organised crime: the United Nations Convention against Illicit Traffic of Drugs and Psychotropic Substances (1988), the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990, COE – ETS 141), the Criminal Law Convention against Corruption (1999 COE – ETS 173).

Slovenia also entered into bilateral and multilateral agreements regulating international judicial assistance with the following SEE countries and EU countries: Croatia (1994), Czech Republic (1964), FYRoM (1996), Slovakia (1964), Turkey (1973), Belgium (1971), France (1969), and Germany (1971).

Besides this international framework, prosecutors and investigating judges are obliged to respond to foreign requests for assistance by art. 514 to 537 CCP provided that dual criminality requirement be fulfilled.⁶⁰⁷ Under these provisions, there appears to be at least four channels for assistance: diplomatic (general rule), via Ministry of Interior (urgent cases), via agencies for detection and suppression of

⁶⁰⁷ Art. 515 CCP: (1) The requests of domestic courts for legal assistance in criminal matters are sent to foreign bodies via diplomatic channels. The same stands for the requests of foreign bodies to the domestic courts. (2) In urgent cases, when such reciprocity exists, the requests for legal assistance can be sent via Ministry of Interior, in cases of money laundering such requests can be sent via agencies for detection and suppression of money laundering. (3) In case of reciprocity or existence of such international agreement, international legal assistance can be executed directly between domestic and foreign bodies, dealing with pre-trial or trial procedure.

money laundering (money laundering cases), and directly between domestic and foreign bodies dealing with pretrial or trial procedures (in case of reciprocity/existence of agreements).

b) Practices

All the international and European instruments mentioned above are averagely used by Slovenian prosecutors or investigating judges, and in particular the European Convention on Extradition (1957 COE) and the European Convention on Mutual Assistance in Criminal Matters (1959 COE), which are often used.

Bilateral agreements are also used by investigating judges or prosecutors. However, the European Convention on Mutual Legal Assistance in Criminal Matters is used whenever possible. The bilateral relations utilized the most are in place with Croatia, Austria and Italy, followed by Bosnia–Herzegovina, Germany and United Kingdom. The other bilateral agreements are rarely used (Bulgaria, Czech Republic, FYRoM, Serbia and Montenegro, Hungary, Poland, Romania, Slovakia, Turkey, Belgium, Denmark, France, Greece, The Netherlands and Spain). Some, in the experience of the expert interviewed were never used (Albania, Moldova, Finland, Ireland, Luxembourg, Portugal and Sweden).

2.5. DIRECT CHANNELS OF POLICE AND JUDICIAL COOPERATION

a) Legislation

In general, the Police Law of 1998 and the amendments made to the Criminal Procedure Act of 1999 has made the exchange of information and direct communication across the borders easier.

Direct judicial cooperation is assured with all the countries in case of reciprocity (see supra, § 4.a), according to the ratified European Convention on Mutual Legal Assistance in Criminal Matters, whether an agreement exists or not.

Direct police cooperation is granted by formal agreements with all SEE countries (with the exception of Bosnia–Herzegovina, Moldova, and Turkey): Albania (1998), Bulgaria (2002), Croatia (1994), Czech Republic (1999) FYRoM (1995), Serbia–Montenegro (2001), Hungary (1994) Poland (1998), Romania (2001) and Slovakia (1995). Formal agreements were signed with the following EU countries: Austria (1996), Belgium (2001), Greece (2002), and Italy (1994).

Slovenian prosecutors and investigating judges, when directly contacted by colleagues from another country asking for assistance are not obliged by law to forward the request for assistance to their competent colleagues, if they do not have jurisdiction to implement the request.⁶⁰⁸ Neither are they obliged to summon

⁶⁰⁸ It should be noted, however, that in practical terms prosecutors are supposed to answer to the Ministry in case of requests via diplomatic channels or to the counterpart in case of direct cooperation. Moreover, on a more formal and less direct level, art. 515 CCP establishes that: '1. The requests to domestic courts for legal assistance in criminal matters are sent to foreign bodies via diplomatic channels. The same is true for the requests from foreign bodies to the domestic courts. 2. In urgent cases, when such reciprocity exists, requests for legal assistance can be sent via the Ministry of Interior, in cases of money laundering such requests can be sent via agencies for the detection and suppression of money laundering. 3. In case of

the witnesses and experts, whose testimony is requested by colleagues of a foreign country. Information and of evidence are formally difficult to achieve for foreign prosecutors investigating in Slovenia, because Slovenian prosecutors are not obliged by law to execute freezing or confiscation orders, search warrants, and all the other ordinary and special means of investigations (interceptions, audio or video recording, undercover operations, use of storefronts by investigative units, covert methods such as controlled delivery).⁶⁰⁹ The only information that Slovenian prosecutors or investigating judges are obliged to transmit, when requested by a foreign colleague, are extracts of bank and criminal records. Finally, there are no liaison magistrates in foreign countries who can help Slovenian prosecutors or investigating judges to identify competent foreign counterparts to whom they can address a request for assistance.

The situation is very different for Slovenian police officers. If police officers receive a request that they can not act upon because of jurisdictional issues they are obliged by law to forward the requests for assistance to competent colleagues. Moreover, when Slovenian police gathers information on a transnational organised crime ring, which could be useful to develop an investigation in another country, they are obliged by law to forward that information to the authorities of the other country. Slovenian police can even send documents related to auto vehicle ownership and documents related to criminal records. However, they cannot send bank or phone records, even if requested.

There are no liaison officers stationed by Slovenia in other countries, even though Slovenia has stationed several liaison officers in several international organisations (Interpol, Europol, SECI Center).

When foreign police officers start a shadowing operation in their country, they can be authorised to continue it within the borders of Slovenia in cooperation with local police. In general, Slovenian law enforcement agencies create joint investigative teams with Bosnia and Herzegovina, Croatia, FYRoM, Serbia and Montenegro, Hungary, Austria, Germany, Italy, and The Netherlands.

Another channel of direct cooperation available to Slovenian police officers is that of international joint customs surveillance operations, which happens with Croatia, Hungary, Austria, and Italy.

b) Practices

As stated above, provided reciprocity, Slovenian prosecutors or investigating judges enter into direct contact with foreign colleagues whether a formal agreement exists or not. As there are no liaison magistrates, Slovenian prosecutors are informed by police or the Office of Money Laundering Prevention which foreign body is conducting retrial or trial procedure and where. If they do obtain the exact phone or the name of the counterpart colleague, they simply telephone the foreign body and/or use the fax. These numbers can also be obtained from the internet.

reciprocity or existence of such international agreement, international legal assistance can be executed directly between domestic and foreign bodies, dealing with pre-trial or trial procedure.⁷

⁶⁰⁹ According to art. 516, section 3, CCP, the admissibility and method of execution of a foreign request for a legal aid it decided by the courts.

Additionally they use established informal contacts, which are deemed to be even more useful than formal cooperation, even if the results can lead to evidentiary difficulties.⁶¹⁰

Joint investigation teams and international joint customs surveillance operations are, in the experience of our experts, the most successful and useful channels of direct police cooperation.

This system of direct cooperation between Slovenian prosecutors, investigating judges and police officers with their foreign counterparts is facilitated by the following factors:

- adequate computer equipment (computer networks and official e-mail accounts);
- medium level of training in investigating transnational organised crime cases;
- no particular language problems at least with countries which belonged to former Yugoslavia.

2.6. INTERNATIONAL AND REGIONAL ORGANISATIONS

a) Legislation

Interpol is the normal instrument used by Slovenian police officers to identify the competent counterparts in foreign countries. The Slovenian Interpol National Bureau provides the police from foreign countries with the following, if requested:

- information regarding investigations of crimes committed in Slovenia;
- information on investigations aimed at tracing goods located in Slovenia, which are related to a crime committed abroad;
- information regarding criminal records;
- information related to the ownership of auto vehicles and regarding driving licenses issued in Slovenia;
- information regarding the ownership of phone numbers.

Slovenia is one of the few countries to have an agreement of cooperation with Europol. Both the EJM and Eurojust cooperate with Slovenia in the fight against organised crime. The EJM provides legal and practical information on mutual legal assistance in other countries, direct contacts with local prosecution offices and law enforcement authorities, information on investigative procedures and crime prevention methods as well as training initiatives and advice and support with individual investigations. Eurojust provides legal advice and assistance in cross-border cases, input to national authorities, direct help in the letters of rogatory, directs contacts with local prosecution offices, exchange of information on

⁶¹⁰ Council of Europe, *Cross Border Cooperation in the Combating of Organised Crime*, Best Practice Survey n. 5, Strasbourg, January 2003, p. 9–10.

investigative procedures and crime prevention methods, advice and support in individual investigations.

b) Practices

In the experience of our experts, the degree of cooperation between Slovenia and the international/European organisations relevant for police and judicial cooperation is rather good. The following tables illustrate the level of cooperation (where 0=no cooperation, 1=low level of cooperation, 2=medium level of cooperation and 3=high level of cooperation) in the different areas in which they operate. This evaluation is based on the personal judgement of the experts interviewed.

TABLE 17. DEGREE OF COOPERATION BETWEEN SLOVENIA AND INTERPOL

Exchange of strategic and operational information	2
Exchange of financial information on suspected corporate entities	1
Provision of direct contacts with local law enforcement authorities	2
Provision of direct contacts with local prosecution offices	2
Exchange of information on investigative procedures and crime prevention methods	2
Training initiatives	2
Advice and support in individual investigations	2
Exchange of liaison officers	2
Participation in joint investigative teams in a support capacity	2
Participation in joint investigative teams in an operative capacity	1

TABLE 18. DEGREE OF COOPERATION BETWEEN SLOVENIA AND EUROPOL

Exchange of strategic and operational information	2
Exchange of financial information on suspected corporate entities	1
Provision of direct contacts with local law enforcement authorities	2
Provision of direct contacts with local prosecution offices	1
Exchange of information on investigative procedures and crime prevention methods	2
Training initiatives	2
Advice and support in individual investigations	2
Exchange of liaison officers	2
Participation in joint investigative teams in a support capacity	2
Participation in joint investigative teams in an operative capacity	2

TABLE 19. DEGREE OF COOPERATION BETWEEN SLOVENIA AND EUROJUST

Legal advice and assistance in cross-border cases	2
Inputs to national authorities to take steps and initiate investigations	2
Direct help in the letters of rogatory	2
Provision of direct contacts with local law enforcement authorities	2
Provision of direct contacts with local prosecution offices	2
Exchange of information on investigative procedures and crime prevention methods	2
Advice and support in individual investigations	2

TABLE 20. DEGREE OF COOPERATION BETWEEN SLOVENIA AND EJM

Provision of legal and practical information on mutual legal assistance	2
Provision of direct contacts with local law enforcement authorities	2
Provision of direct contacts with local prosecution offices	2
Exchange of information on investigative procedures and crime prevention methods	2
Training initiatives	2
Advice and support in individual investigations	2

3. GOOD PRACTICES

3.1. STRUCTURES SET UP FOR INTERNATIONAL COOPERATION PURPOSES

As stated above, there are several central authorities apart from the Ministry of Justice, which provide for international assistance. These authorities are usually the Ministry of Justice for prosecutors or investigating judges and the Ministry of Interior for police officers.

These authorities send and receive requests for assistance to and from foreign countries. For this purpose, they have translators readily available, who can translate a request for assistance into the language of the requesting state. The Ministry of Justice has translators available for most official European languages, including German, English, Italian, French, Serb and Croat, etc.

The requests for assistance are sent by mail, fax and email, but no national standard form exists for the purpose of asking for international assistance.

The process to get an answer to an assistance request is long. It can take up to two months to get an answer to an assistance request made to a foreign country.

3.2. DATABASES ON ORGANISED CRIME

No common criminal databases have been established to share OC information collected in Slovenia with foreign counterpart colleagues.

However, there is a national centralised database that contains information about persons wanted for participating in OC groups. A foreign police officer can access the information contained in the database provided that the request is made through normal international police cooperation channels such as Interpol and Europol.

Information related to persons convicted for participating in organised criminal groups has not yet been collected in a national centralised database.

3.3. *MODI OPERANDI*/METHODS IN THE INTERNATIONAL COOPERATION PROCESS

Slovenia has enacted the following *modi operandi*/methods in order to speed up the international cooperation process:

- acknowledgement of all requests and written enquiries concerning the execution of requests;
- explaining when the assistance requested is likely to be provided;
- ensuring that requests are submitted in compliance with the relevant treaty or other international arrangements;
- use of fax and emails to send requests;
- other:

National Focal Points

The establishment of a National Focal Point for Law Enforcement institutions dealing with international cooperation represents an example of good practice, because the centralisation of responsibilities for making contacts with competent counterparts in cases of international cooperation in a single office is of great help to police and customs officers investigating transnational organised cases in their and other countries. Interpol (and more recently Europol) has already established its centralised units in many countries.

SECI Center

Slovenia has recently posted liaison officers at the SECI Center. In the opinion of the experts interviewed, the SECI Center also provides a venue where law enforcement agencies can talk directly to one another and discuss and organise operations.

SECI Center also represents good practice in the sense that it allows the obstacles to cooperation to be overcome. For example, many Eastern European countries are still not linked to Europol. SECI Center is different in this respect. A regional approach is taken, which is not covered by any other institution, at least with regard to the Eastern European countries. Also important is its geographical location at the very heart of the region. The result is that the SECI Center represents the only place where some countries can find information regarding criminal activities in the region.

SECI Center has demonstrated practical abilities in coordinating operations. For these reasons it has also been recognised by EU Member States (e.g. Germany, Italy, Belgium, Austria, Spain...) which are observer countries at the SECI Center and very cooperative in SECI Center activities.

4. EMERGING OBSTACLES

The analysis of legislation, practices and good practices relevant for international cooperation against organized crime has highlighted some shortcomings that are reported here for the sake of clarity, as they represent the background and rationale for the recommendations included in paragraph 5.

4.1. OBSTACLES IN LEGISLATION

1. The partial lack of consistency with international standards of the criminal definition of trafficking in persons

Despite the recent ratification of the UN Protocol on trafficking in persons, the Slovenian criminal code is not yet fully consistent with it. A new draft article of the criminal code (art. 387a) is in the process of being approved.

2. The partial lack of consistency with international standards of the confiscation regime

The Slovenian confiscation regime is in compliance with all international standards apart from that dealing with the 'reversal of the burden of proof'. For this reason it is not possible to put the onus probandi on the defendant in order to show the legal origin of his/her assets, but it is always up to the prosecutor to prove this.

3. The limitations in the witness protection system

Protection for witnesses who testify concerning offences committed by OC groups is currently limited to the protection of privacy and identity during criminal proceedings, but there is no protection system for victims or witnesses in trafficking cases as requested by art. 6, para 5, of the Palermo Protocol.

4. The lack of bilateral judicial agreements with all neighbours

Although Slovenia has ratified almost all the multilateral instruments of judicial cooperation, bilateral agreements have not been concluded with all its neighbouring countries. The lack of bilateral instruments with all neighbouring countries might impair the cooperation process at a practical level, because through the deployment of solely multilateral instruments, it is not possible to reach the level of definition and detail achieved by bilateral agreements.

5. The legal and practical problems in direct judicial cooperation

Slovenian prosecutors/investigating judges have no legal obligation to:

- forward requests for assistance to competent colleagues, if they have no jurisdiction;
- summon witnesses and experts for foreign colleagues;
- execute search warrants for foreign colleagues;
- execute ordinary and special means of investigation for foreign colleagues;
- execute freezing and confiscation orders.

Additionally, there are no liaison magistrates posted by Slovenia to foreign countries, who might expedite the cooperation process, even if the problem is usually solved through the deployment of other channels (Office for Money Laundering) and personal contacts.

The absence of such legal obligations and operative instruments for direct judicial cooperation might represent an obstacle to fast cooperation and exchange of information.

6. The legal and practical problems in direct police cooperation

Slovenian police officers do not have the legal possibility to directly send bank and phone records if requested by a foreign counterpart.

Additionally, except for at the SECI Center, EUROPOL and INTERPOL, there are no liaison officers stationed by Slovenia in foreign countries, who might expedite the cooperation process.

4.2. OBSTACLES IN PRACTICES

7. The lack of ready availability of translators for prosecutors

Slovenian prosecutors do not have readily available translators for the documents coming from a foreign country in answer to a cooperation request.

4.3. OBSTACLES IN GOOD PRACTICES

8. The lengthiness of assistance procedure through central authorities

It takes up to two months to get an answer to an assistance request made to a foreign country. Despite the deployment of fax and email, there is no national standard form for prosecutors to use to ask for international assistance.

4.4. OTHER OBSTACLES MENTIONED BY THE EXPERTS

9. Obstacles to investigating organised crime

The experts interviewed mentioned the following as the most significant obstacles to investigating organised criminal groups:

- lack of legislation (in particular, the absence of a witness protection law);
- limited investigative powers;
- lack of a multidisciplinary approach; i.e. cooperation between officers with different skills in the development of organised crime investigations;
- lack of human resources within the offices participating in organised crime investigations;
- lack of material resources within the offices participating in organised crime investigations;

- high turnover of specialised personnel participating in organised crime investigations.

10. Obstacles to police assistance

The experts interviewed mentioned the following as the most significant obstacles to *police assistance* received by Slovenia from other countries in pre-trial investigations into transnational organised crime:

- lack of response to requests for assistance;
- delay of response to requests for assistance
- lack of harmonisation in legislation.

11. Obstacles to judicial assistance

The experts interviewed mentioned the following as the most significant obstacles to *judicial assistance* received by Slovenia from other countries in pre-trial investigations into transnational organised crime:

- lack of response to requests for assistance;
- delay of response to requests for assistance;
- lack of harmonisation in legislation.

5. RECOMMENDATIONS

5.1. RECOMMENDATIONS ON LEGISLATION

Recommendation n. 1

'Refining the criminal definition of trafficking in persons'

Background and rationale

Despite the recent ratification of the UN Protocol on trafficking in persons, the Slovenian criminal code is not yet fully consistent with it. A new draft article of the criminal code (art. 387a) is in the process of being approved.

Recommendation

Action should be taken to refine the criminal definition of trafficking in persons.

Implementing measures

Slovenian legislators should consider to enacting the proposed art. 387a CC in a short period of time.

Recommendation n. 2

'Improving the confiscation regime'⁶¹¹

Background and rationale

The Slovenian confiscation regime is in compliance with all international standards apart from that dealing with the 'reversal of the burden of proof'. For this reason it is not possible to put the onus probandi on the defendant in order to show the legal origin of his/her assets, but it is always up to the prosecutor to prove this.

Recommendation

Action should be taken to improve the confiscation regime.

Implementing measures

Slovenian legislators should consider enacting provisions easing the burden of proof of the prosecutors.

⁶¹¹ This recommendation is also directly suggested by the experts interviewed.

Recommendation n. 3

'Expanding the scope of witness protection provisions'⁶¹²

Background and rationale

Protection for witnesses who testify concerning offences committed by OC groups is currently limited to the protection of privacy and identity during criminal proceedings, but there is no protection system for victims or witnesses in trafficking cases as requested by art. 6, para 5, of the Palermo Protocol.

Recommendation

Action should be taken to expand the scope of witness protection provisions to fully comply with the Palermo Protocol.

Implementing measures

Protection should not be limited to witnesses during trials, but it should also be extended to their families and include 'victim protection'.

Recommendation n. 4

'Concluding agreements on judicial cooperation with all neighbours'

Background and rationale

Although Slovenia has ratified almost all the multilateral instruments of judicial cooperation, bilateral agreements have not been concluded with all its neighbouring countries. The lack of bilateral instruments with all neighbouring countries might impair the cooperation process at a practical level, because through the deployment of solely multilateral instruments, it is not possible to reach the level of definition and detail achieved by bilateral agreements.

Recommendation

Action should be taken to conclude bilateral agreements on judicial cooperation with all neighbouring countries.

Implementing measures

The Slovenian government should conclude bilateral agreements on judicial cooperation with all its neighbouring countries.

⁶¹² This recommendation is also directly suggested by the experts interviewed.

Recommendation n. 5

'Enhancing the channels of direct judicial cooperation'

Background and rationale

Slovenian prosecutors/investigating judges have no legal obligation to:

- forward requests for assistance to competent colleagues, if they have no jurisdiction;⁶¹³
- summon witnesses and experts for foreign colleagues;
- execute search warrants for foreign colleagues;
- execute ordinary and special means of investigation for foreign colleagues;
- execute freezing and confiscation orders.

Additionally, there are no liaison magistrates posted by Slovenia to foreign countries, who might expedite the cooperation process, even if the problem is usually solved through the deployment of other channels (Office for Money Laundering) and personal contacts.

Recommendation

Action should be taken to enhance direct channels of cooperation for Slovenian prosecutors/investigating judges.

Implementing measures

Direct judicial cooperation should be promoted by providing the legal and material possibility for prosecutors to adopt the measures of cooperation mentioned above. Possible implementing measures are:

- improving the legal framework for direct judicial cooperation making possible the measures for direct cooperation mentioned above;
- posting liaison magistrates abroad, especially in the countries where most of the requests for assistance are addressed, in order to expedite the process of cooperation.

⁶¹³ It should be noted, however, that in practical terms prosecutors are supposed to answer to the Ministry in case of requests via diplomatic channels or to the counterpart in case of direct cooperation.

Recommendation n. 6

'Enhancing the channels of direct police cooperation'

Background and rationale

Slovenian police officers do not have the legal possibility to directly send bank and phone records if requested by a foreign counterpart.

Additionally, except for at the SECI Center, EUROPOL and INTERPOL, there are no liaison officers stationed by Slovenia in foreign countries, who might expedite the cooperation process.

Recommendation

Action should be taken to enhance direct channels of cooperation for Slovenian police officers.

Implementing measures

- Direct police cooperation should be promoted by giving the legal possibility to police officers to directly send bank and phone records if requested by a foreign counterpart.
- Slovenia should post liaison officers abroad, especially in the countries where most of the requests for assistance are addressed.

5.2. RECOMMENDATIONS ON PRACTICES

Recommendation n. 7

'Providing prosecutors investigating TOC cases with ready availability of translators'

Background and rationale

Slovenian prosecutors do not have readily availability of translators for the documents coming from a foreign country in answer to a cooperation request.

Recommendation

Action should be taken to provide readily available translators for prosecutors/judges investigating TOC cases.

Implementing measures

A 'translation service' could be established to provide fast and secure translation of documents coming from a foreign country in answer to a cooperation request.

5.3. RECOMMENDATIONS ON GOOD PRACTICES

Recommendation n. 8

'Speeding up the procedures to get an answer to an assistance request'

Background and rationale

It takes up to two months to get an answer to an assistance request made to a foreign country. Despite the deployment of fax and email, there is no national standard form for prosecutors to use to ask for international assistance.

Recommendation

Action should be taken to speed up the procedures to get an answer to an assistance request.

Implementing measures

- A national standard form observing the relevant international treaties could be used to facilitate the process of getting an answer to assistance requests.
- Personal contacts among practitioners should be encouraged.

8.12.

THE CZECH REPUBLIC⁶¹⁴

INTRODUCTION

The Czech Republic is a parliamentary democracy which was established in 1993 following the division of the Czech and Slovak Federal Republic into two independent sovereign States. It has been a UN member since 19.01.1993 and a COE member since 30.06.1993. It is scheduled to accede to the EU on 1 May 2004.⁶¹⁵

The Constitution of the Czech Republic was adopted on 16 December 1992 and entered into force on 1 January 1993. The Criminal Code was adopted in 1961 and the Code of Criminal Procedure entered into force in 1962. Since 1989, the CCP has been amended 15 times. Its criminal procedure principles are characterized by both by accusatorial (oral proceedings, publicity of proceedings, presence of alternative solutions to the proceedings) and inquisitorial elements (officiality principle, i.e. the state monopoly of the power to initiate a proceeding and its duty to carry out all the acts provided for by criminal procedures by looking at both inculpatory and exculpatory elements).

As to law enforcement structures, there are several specialized units operating against organized crime in the Ministry of Interior:

- the Organized Crime Unit;
- the Corruption and Serious Economic Crimes Unit;
- the Financial Crime and State Protection Unit.

1. THE ORGANISED CRIME SITUATION

1.1 FEATURES OF THE ORGANISED CRIMINAL GROUPS

Different estimates are available regarding the number of organised crime groups and the average number of participants. While law enforcement sources estimate that the groups number more than 50 and that the average membership ranges from 20 to 30 people, prosecutorial sources estimate both a smaller number of groups (between 20 and 30) and a smaller average membership (from 10 to 20).

⁶¹⁴ The Czech country profile was based, among other materials, on the answers given by the following experts: Mrs. Svetlana Klouckova, Director of the International Affairs Department, Supreme public Prosecutor's Office, Brno; Mrs. Milena Penkavova, Police Counsellor, Organised Crime Unit, Prague. They answered to two questionnaires: one in autumn 2002 and one in summer 2003. The final revision and updating was carried out by Mrs. Milena Penkavova in May 2004.

⁶¹⁵ Central Intelligence Agency (CIA), *The 2002 World Fact Book*, 2002, available at the CIA website: <http://www.cia.gov/cia/publications/factbook/print/ez.html> (last verified on 23 March 2004).

The organised crime scene in the Czech Republic appears variegated due both to the diversity of structures that the groups adopt and to the numerous nationalities of the groups operating in the territory. '*Organised crime is, by and large, an imported product, although there are signs that native Czechs have begun engaging in some aspects of criminality in an organised manner.*'⁶¹⁶

With regards the structure of organised criminal groups, it is necessary to stress that criminal groups in the Czech Republic adopt different structures. Some groups, which appear to be the majority, have vertically organised structures with different levels, where bosses at each level are clearly identifiable. This kind of well-defined hierarchical structure is the one that is usually associated with the traditional concept of the 'Italian Mafia'. These kinds of groups are known to outsource some of their activities to professionals, although these professionals are not always full members of the groups or aware of the illicit nature of the activities undertaken by their clients. The hiring of advisors has also been observed in organisations with these structures.⁶¹⁷ Other groups do not have a well-defined structure. They are organised horizontally and no leaders can actually be identified.⁶¹⁸

Criminal groups are of different ethnic origins. Groups made up only by Czech citizens exist, but participation in many others is 'ethnically-mixed'. The nationalities that seem to be mostly involved in the latter are Vietnamese, Chinese,⁶¹⁹ Russian, Ukrainian, Albanian, Bulgarian, Serbian, Montenegrin, Arabic and Italian.

Groups composed exclusively of foreigners can also be found in the country. Russian criminal organisations seem to have the greatest representation within Czech borders, followed by Ukrainians and other Newly Independent States (NIS) countries. Three Russian groups with 100 to 200 members have been identified by law enforcement. Vietnamese, Bulgarian and Albanian groups also operate in the territory.⁶²⁰ Italian and Chinese groups are also present; the latter are usually organised in small cells made up of 10 to 20 members. Groups from the FRY are also present.⁶²¹

All of these criminal groups do not seem to specialise in one activity, but commit different kinds of crime, with the aid of the newest and most sophisticated

⁶¹⁶ R. Kupcinsky, 'Organised Crime in the Czech Republic', in *Crime and Corruption Watch*, 25 October 2002, vol. 2 n. 38.

⁶¹⁷ European Committee on Crime Problems (CDCP), Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime, *Report on the Organised Crime Situation in Council of Europe Member States*, Council of Europe, Strasbourg, December 2000, p. 7, available at: http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/Organised_crime/Documents/Report1999E-2.pdf (last verified on 23 March 2004), p. 16.

⁶¹⁸ *Ibidem*.

⁶¹⁹ *Ibidem*.

⁶²⁰ *Ibidem*.

⁶²¹ Czech Ministry of Interior, *Report on the Security situation in the Czech Republic in 2000, 2001*, available at: http://www.mvcr.cz/dokumenty/bezp_si00/angl/index.html (last verified on 23 March 2004). See also *Id.*, *Information on Organised Crime Status in the Czech Republic in 2000*, available at: http://www.mvcr.cz/dokumenty/org_zlo/konc2000/english/2_org_cr.html (last verified on 23 March 2004).

technologies.⁶²² Most of these groups do not carry out their activities only in the Czech Republic, but also operate in other countries and are, therefore, transnational. The countries in which their influence seems to be particularly widespread are Albania, Bulgaria, the Federal Republic of Yugoslavia, Hungary, Poland, the Slovak Republic, Turkey, Russia and Ukraine. The groups apparently operate also in EU countries, particularly in France, Germany and in the Netherlands. In all these countries they cooperate with local groups to commit offences. Although Czech criminal associations do not seem to have a physical presence in Italy and Spain, they are known to cooperate with groups based in those countries.

1.2. ACTIVITIES OF THE ORGANISED CRIMINAL GROUPS

Several organised crime groups engage in **drug trafficking** in the country. Due to its geographical position, the Czech Republic is strategically located for the transfer of heroin produced in South West Asia which comes through Turkey and the Balkans to Western and Northern European markets.⁶²³ The criminal organisations, which seem most involved in this kind of crime, are made up of Kosovar Albanians. Other different groups are involved in drug distribution within the country: Kosovar Albanian, Nigerian and Russian groups.⁶²⁴ These groups used to have their headquarters in the country⁶²⁵, but a recent police study claims that heroin gangs are moving their bases outside the Czech Republic.⁶²⁶ This trend appears to be confirmed in the findings of the National Anti-Drug Centre, which show that heroin operations have moved to Poland and Slovakia.

Heroin is not the only drug that transits through the country. Cocaine for Western and Northern European markets is also trafficked.⁶²⁷ In 1999 a total of 3,159 persons were arrested for drug trafficking offences.⁶²⁸

Some of the heroin that arrives in the country is sold within its borders to satisfy local demand. The same applies to cocaine,⁶²⁹ which is mainly popular among foreign tourists.⁶³⁰

⁶²² Czech Ministry of Interior, *Report on the Security situation in the Czech Republic in 2000*, cit.

⁶²³ *Ibidem*. See also U.S. Department of State, *International Narcotics Control Strategy 2003*, March 2004, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2003/> (last verified on 23 March 2004).

⁶²⁴ *Ibidem*.

⁶²⁵ U.S. Department of State, *International Narcotics Control Strategic Report*, 2002, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2001/rpt> (last verified on 23 March 2004).

⁶²⁶ Cameron R., 'Police study: heroin gangs abandoning Czech Republic', in *Radio Prague*, 12 May 2003, available at: <http://www.radio.cz/en/news/40607> (last verified on 23 March 2004).

⁶²⁷ Secretariat of the National Drug Commission of the Czech Republic, *Report on the Drug Situation 2000 – Czech Republic*, 2000, p. 57, available at: <http://candidates.emcdda.eu.int/2002-ceecs-report/section-2-about-ceecs/czech-republic/annual-report-drugs-2001-en.pdf> (last verified on 23 March 2004).

⁶²⁸ European Committee on Crime Problems (CDCP), Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime, *Report on the Organised Crime Situation in Council of Europe Member States*, cit., p. 76.

⁶²⁹ *Ibidem*.

Recently the Czech Republic has also become a drug producing country. Cannabis is grown locally, mostly for personal use, even if in 2002 law enforcement agencies discovered 14 illegal laboratories where drugs were made. Typical to this country is a peculiar kind of substance, called Pervitin. It is an amphetamine-based drug that is the second most abused substance in the country.⁶³¹ Although it is the drug of choice among young people, its production exceeds demand of internal market and thus some of it is exported. In March 2000 law enforcement authorities seized 20 kilograms of amphetamine and ephedrine in a small village that was going to be trafficked outside the country by a Kosovar Albanian organisation, which they thought might be of local origin.⁶³² In 1999 27 laboratories producing Pervitin were seized and in 2000 law enforcement agents shut down 28 laboratories producing metamphetamines⁶³³. Over the last few years Asian and Russian groups have entered the business of trafficking Pervitin⁶³⁴ and as a result the professionalism and organisation of this business increased and expanded in 2003.⁶³⁵

Considering that the producers of the drugs are mainly Czech citizens, while the traffickers generally belong to other organisations, it is possible that there are agreements between these groups that cover the whole process from production to distribution/traffic of the drugs. A trend that has emerged among organised dealers selling drugs in the country is the use of the Internet to sell their products. In fact, in the Czech republic authorities have been reporting ever increasing drug sales and purchases arranged online at Internet Cafes. This has turned out to be quite a successful technique because *'the warning signals that might deter or frighten a young person in the real world are minimised and the filtering process by which an individual moves into physical contact with a criminal organisation disappears. Moreover, because illicit drug deals are arranged simultaneously and over short distances, interceptions by law enforcement authorities is much more difficult'*.⁶³⁶

Organised crime groups of various origins are active in **human trafficking**, above all for prostitution purposes, but the organisations that seem more involved are Russian speaking.⁶³⁷ The Czech Republic is a country of origin, transit and

⁶³⁰ Czech Ministry of Interior, *Report on the Security situation in the Czech Republic in 2000*, cit.

⁶³¹ Ibidem.

⁶³² 'Czech Custom Officers Cut Off International Drug Ring', 8 March 2000, available at: http://www.nisat.org/blackmarket/europe/North_Europe/sweden/2000.03.08-Czech%20Customs%20Officers%20Cut%20Off%20international%20Drug%20Ring.html (last verified on 23 March 2004).

⁶³³ ODCCP, Office for Drug Control and Crime Prevention (ODCCP), *Global Illicit Drug Trends*, United Nations, New York, 2002, p. 72.

⁶³⁴ Czech Ministry of Interior, *Report on the Security situation in the Czech Republic in 2000*, cit.

⁶³⁵ U.S. Department of State, *International Narcotics Control Strategy 2003*, cit.

⁶³⁶ W.J. Kole, 'Trafficking over the Internet Growing', 27 February 2002, available at: <http://www.drugstory.org/feature/internet.html> (last verified on 15 March 2004)

⁶³⁷ 'Czech Republic: Trafficking in Women in the Shadows. Prague Organised Crime', 12 September 2000, available at: <http://www.neww.org/pipermail/women-east-west/2000-September/000456.html> (last verified on 15 March 2004).

destination.⁶³⁸ The girls come from Moldova, Romania, Bulgaria, Ukraine and Asia.⁶³⁹ While some of them are subsequently trafficked to Western European countries, others are obliged to work in various brothels in the country – especially those close to the German and Austrian border⁶⁴⁰ – and after some time they are transported towards Western European markets. The small town of Cheb (32,000 inhabitants) is visited every weekend by 10,000 Germans who drive there to buy cheap goods and sexual services. Fifteen different criminal organisations are thought to profit from prostitution in the town.⁶⁴¹ Many of the nightclubs in which the victims are forced to offer sexual services (which are also restaurants and bars during the day), are managed by Albanian organised criminals. During the war in Kosovo the same restaurants and bars were used as transshipment points for the weapons that were destined for the movements that were fighting for Kosovo independence.⁶⁴²

Proof that the Czech Republic is also a country of origin is evidenced by the fact that the biggest group of forced prostitutes in Austria and the Netherlands are Czech. Czech women are also the third largest group of forced prostitutes in Germany.⁶⁴³

Organised criminals also engage in **weapons and explosives trafficking**, sometimes with the collusion of members of the military, from whom they obtain the weapons in the first place.⁶⁴⁴ On 27 August 2002 Czech police, in cooperation with Swiss and German detectives smashed an international arms trafficking ring. The group – which was led by a Canadian citizen with Russian origins – had contacts with Russian organised criminals from whom they obtained the weapons that were smuggled into the Czech Republic. They were then illicitly exported to several Arab countries subject to embargo. The variety of arms and weapons offered to wealthy customers was remarkable: from tanks, missiles, missile carriers to firearms of

⁶³⁸ 'In 2002 the Czech Republic investigated 19 cases under the trafficking in persons statute, resulting in 14 indictments. Police recorded 139 trafficking related arrests during 2002'. See U.S. Department of state, *Trafficking in Persons Report*, June 2003, available at: <http://www.state.gov/g/tip/rls/tiprpt/2003/21275.htm> (last verified on 15 March 2004), p.22.

⁶³⁹ U.S. Department of State, *Trafficking in Persons Report*, 2002, p. 22, available at: <http://www.state.gov/g/tip/rls/tiprpt/2002/10653.htm> (last verified on 15 March 2004), p. 43.

⁶⁴⁰ Many customers of brothels come from Germany and Austria for sex tourism. M. Lehti, *Trafficking in women and Children in Europe*, HEUNI Paper n. 18, Helsinki 2003, p. 23–24, available at: <http://www.heuni.fi/uploads/to30c6cjxyah11.pdf> (last verified on 15 March 2004).

⁶⁴¹ United Nations Office for Drug Control and Crime Prevention, *The Case of the Czech Republic*, 30 October 2002, available at: http://www.undcp.org/odccp/trafficking_projects_czech_republic.html (last verified on 15 March 2004).

⁶⁴² R. Kupcinsky, 'Albanian Organised Crime in the Czech Republic', in *Crime and Corruption Watch*, 26 September 2002, vol. 2 n. 34, available at: <http://www.rferl.org/corruptionwatch/2002/09/34-260902.asp> (last verified on 15 March 2004).

⁶⁴³ United Nations Office for Drug Control and Crime Prevention, *The Case of the Czech Republic*, cit.

⁶⁴⁴ In August 2002 there was a scandal in the Czech military forces that caused the firing of various functionaries at a very high level. One of them was allegedly involved in selling weapons to organised criminal groups. See: R. Kupcinsky, 'Albanian Organised Crime in the Czech Republic', in *Crime and Corruption Watch*, 4 October 2002, vol. 2, n. 35, available at: <http://www.rferl.org/corruptionwatch/2002/10/35-041002.asp> (last verified on 15 March 2004).

different kinds. The ring had allegedly been operating for three years.⁶⁴⁵ In August 2002 local law enforcement authorities arrested 5 members of an organised crime group while they were trying to sell weapons to other persons. During the operations 48 kilograms of explosive were seized, together with 97 fuses. Only several months before (April 2002), police officers had arrested another two Czech nationals, who were found to be in possession of 33 kilograms of the same explosive (SEMTEX) and 267 detonators.⁶⁴⁶

Another profitable trafficking activity is that of **radioactive materials**, which are imported into the Czech Republic from the former Soviet Union. This business involves both citizens from NIS countries and Czech citizens under the cover of legal enterprises.⁶⁴⁷

Organised crime is also operating in the field of **stolen cars**, which are mainly transported abroad, but also registered in Czech Republic.⁶⁴⁸ Bulgarian groups seem to be the most involved in this kind of crime, but groups from the FRY also play a role in this illicit trade. In this kind of crime the groups use many accomplices, some of whom are people able to forge ownership and circulation documents.⁶⁴⁹ In 1998 4,400 persons were arrested for stealing vehicles and the same number were convicted. In 1999 the number of individuals arrested for this kind of crime was 3,369.⁶⁵⁰

Counterfeiting and fraud – particularly credit card fraud – committed by organised groups, are also an issue of concern.⁶⁵¹

Criminal organisations are active in **cigarette smuggling**. In 2001 local police seized more than 35.5 million cigarettes, recording a 62% increase on the previous year's seizures.⁶⁵² A cigarette smuggling ring was smashed in October 2002. Three smugglers, one Czech, one Vietnamese and one Slovak were arrested and 9 million cigarettes confiscated. The cigarettes were produced in China and were to be delivered to a Slovak firm.⁶⁵³ Illicit production and smuggling of spirits is also a crime that raises concern.⁶⁵⁴ Organised crime is also involved in smuggling other goods such as **petrol, cultural artefacts and endangered species**.

⁶⁴⁵ R. Kupcinsky, 'Czech Arms Smuggling Ring Caught', in *Crime and Corruption Watch*, 12 September 2002, vol. 2, n. 32, available at: <http://www.rferl.org/corruptionwatch/2002/09/32-120902.asp> (last verified on 15 March 2004).

⁶⁴⁶ Ibidem.

⁶⁴⁷ Ministry of Interior, *Information on Organised Crime Status in the Czech Republic in 2000*, cit.

⁶⁴⁸ Ibidem.

⁶⁴⁹ European Committee on Crime Problems (CDCP), Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime, *Report on the Organised Crime Situation in Council of Europe Member States*, cit., p. 49.

⁶⁵⁰ *Ivi*, p. 77.

⁶⁵¹ *Ivi*, p. 48.

⁶⁵² Czech Ministry of Interior, *Report on the Security situation in the Czech Republic in 2000*, cit.

⁶⁵³ R. Kupcinsky, 'Czechs Confiscate smuggled Cigarettes', in *Crime and Corruption Watch*, cit.

⁶⁵⁴ Czech Ministry of Interior, cit.

Criminal associations also seem to be involved in the production of **counterfeit** CDs and software and in the consequent **intellectual property infringements**.⁶⁵⁵ Recent estimates indicate that between 50 and 80% of software in the Czech Republic is used illegally. This is an area of crime which involves a number of Czechs, whose produce illegal software and export it to EU countries.⁶⁵⁶

Czech groups also commit crimes at a national level, such as **armed robbery, bank fraud, illegal gambling schemes and racketeering**. An emerging threat is represented by the involvement of organised crime in **child pornography**.

According to the 2003 GRECO report, **corruption** remains a serious cause of concern.⁶⁵⁷ It appears to be frequently used by organised criminals as a means of infiltrating the legitimate society and economy.⁶⁵⁸ During the 90's criminal gangs, especially those of Kosovo Albanian origin bribed Czech officials to obtain residence permits, which were essential for them to establish headquarters in the country and pursue their criminal activities.⁶⁵⁹ The perceived level of corruption among the political elite and public officials remains stable, with citizens and companies forced to pay bribes to obtain services.⁶⁶⁰

Money laundering connected to organised crime is also an issue of importance in the Czech Republic. Both the banking and financial systems of the country are vulnerable to laundering. With regards the exploitation of banks, criminals place the dirty money in the institutions with the help of a third person, who opens the accounts on their behalf. These persons are sometimes professionals (such as lawyers) who open the accounts in their name and keep the control of the funds and manage them according to the criminals' wishes. Sometimes the criminals themselves set up companies and open accounts in the name of the company. These operations minimise the risk that the money is recognised as belonging to criminals and that suspicion arises it might be dirty. Once the funds have been placed in the financial system criminals anonymously move them from account to account using the Internet. This makes law enforcement investigations very

⁶⁵⁵ 'In October 2001, four major raids were carried out in the Czech Rep. The first one near the Austrian border led to the discovery of 1.000 **pirate CDs**. Near the German border, 5,000 CDs were seized, followed by 2,000 more in another operation. In the fourth raid, near the Polish border, 1,000 CD-Rs and 200 pirate CDs from Ukraine were seized. Special police forces also found large quantities of drugs during their investigations'. See Union des Fabricants, *Counterfeiting & Organised Crime*, Paris, 2003, p. 13, available at: <http://www.interpol.int/Public/FinancialCrime/IntellectualProperty/Publications/UDFCounterfeiting.pdf>, (last verified on 15 March 2004).

⁶⁵⁶ Ministry of Interior of the Czech Republic, *Analysis of the Current State and Development Trends in the Area of Information Technology and the Internet*, 2002, available at: http://www.mvcr.cz/odbor/bezp_pol/english/dokument/anal_eng.html, (last verified on 15 March 2004).

⁶⁵⁷ Commission of the European Communities, *Comprehensive monitoring report on the Czech Republic's preparations for membership*, p. 13, available at: http://europa.eu.int/comm/enlargement/report_2003/pdf/cmr_cz_final.pdf (last verified on 15 March 2004).

⁶⁵⁸ Czech Ministry of Interior, cit.

⁶⁵⁹ R. Kupcinsky, cit.

⁶⁶⁰ UNPAN, *Nations in Transit 2003: Country Report of Czech Republic*, p. 235, available at: <http://unpan1.un.org/intradoc/groups/public/documents/nispacee/unpan015015.pdf> (last verified on 15 March 2004). See also Transparency International, *Czech Republic Quarterly*, October 2003, p. 2, available at: http://www.transparency.cz/pdf/news_200310_en.pdf (last verified on 15 March 2004).

difficult.⁶⁶¹ Post offices and *bureaux de change* are also used as mechanisms to place and layer the funds; growing alarm has been emerging regarding the exploitation of insurance companies and the stock market.⁶⁶²

Infiltration of the legitimate economy also occurs through the exploitation of the real estate, construction, waste disposal and the procurement sectors. The tourism sector, together with nightlife services (including casinos) also seem to be vulnerable to criminal infiltration.

2. LEGISLATION AND PRACTICES

2.1. CRIMINAL LAW

The Czech Republic has ratified most of the international and European specific instruments against organised crime: the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (ratified on 30.12.1993), the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (entered into force on 01.03.1997), and the 1999 Council of Europe Criminal Law Convention on Corruption (entered into force on 01.07.2002). However, it has not yet ratified the United Nations Convention against Transnational Organised Crime and its Protocols (signed on 14.12.2000).

Despite this very comprehensive ratification of international instruments, there are still some shortcomings in Czech criminal law and some discrepancies in its definitions of organized crime activities.

The main gap in Czech legislation against organized crime appears to be related to the lack of provisions regarding liability of legal persons. A draft law on criminal liability of legal persons is currently pending in the Parliament.

Participation in a criminal association is dealt with by art. 163a of the Criminal Code which was enacted in 1995 ('Participation in a Criminal Conspiracy'), according to which: '*(1) A person who instigates a criminal conspiracy, or who participates in, or supports such conspiracy, shall be sentenced to imprisonment for a term of from two to ten years or to forfeiture of property*'. This definition is not fully consistent with the more detailed one provided by art. 5 of the Palermo Convention, as it does not fully specify the material elements of the conducts criminalized and provide for wide discretion during the sentencing stage.

Money laundering provisions have recently been amended and is now criminalized by art. 252a of the Criminal Code (in force since July 1, 2002).⁶⁶³ The new crime of

⁶⁶¹ Czech Ministry of Interior, *Report on the Security Situation in the Czech Republic in 1999, 2000*, available at: http://www.mvcr.cz/documenty/bezp_si99/angl/uvod.html (last verified on 15 March 2004).

⁶⁶² *Ibidem*.

⁶⁶³ Art. 252a CC ('Legalization of Crime Proceeds'): (1) A person who conceals the origin or endeavours otherwise to materially aggravate or preclude a determination of the origin of a thing or other property benefit obtained through criminal activity with the aim of making it appear that such a thing or benefit was obtained in conformity with the law or who enables another person to commit such an act shall be punished by a term of imprisonment of up to two years or by a pecuniary penalty. (2) An offender shall be sentenced

'Legalization of Crime Proceeds' bring several improvements to the former definitions, which were criticized for not complying fully with European standards by the Council of Europe examiners.⁶⁶⁴ There remain some grounds for uncertainty whether the 'acquisition, possession or use' of laundered proceeds are really covered, and in relation to the mental element, as it is not clear whether money laundering committed by negligence is a crime.⁶⁶⁵

Drug trafficking is criminalized by art. 187 of the Criminal Code, in force since 1973 and repeatedly amended.⁶⁶⁶ These provisions and the general legal framework against drug trafficking are in line with the standards set out by the international community for the fight against drug trafficking and have recently been amended to render them even harsher.⁶⁶⁷

In the Czech Republic there is no CC definition of 'trafficking in human beings', but only provisions related to 'pandering' (art. 204 CC) and 'trade in children' (art. 216a CC).⁶⁶⁸ These provisions have not been updated as to take into account the

to a term of imprisonment of from one to five years if: (a) he commits an act under sub-provision (1) as a member of an organised group; or (b) he obtains a large-scale benefit by such act. (3) An offender shall be punished by a term of imprisonment of from two to eight years or forfeiture of property if: (a) he commits an act under sub-provision (1) related to things connected with the trade in narcotics or psychotropic substances or some other especially serious crime; or (b) he obtains a large-scale benefit by an act under sub-provision (1), or (c) he abuses his position in his job or his function to commit an act under sub-provision (1).

⁶⁶⁴ Council of Europe, Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV), *First Evaluation Report on Czech Republic*, Strasbourg, 11 December 1998, available at <http://www.coe.int> (last verified on 18 February 2004).

⁶⁶⁵ Council of Europe, Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV), *Second Evaluation Report on Czech Republic*, Strasbourg, 28 June 2002, available at <http://www.coe.int> (last verified on 18 February 2004).

⁶⁶⁶ Art. 187 CC (Unauthorised Production and Possession of Narcotic and Psychotropic Substances and Poisons): (1) A person who produces, imports, exports, transits, offers, mediates, sells or otherwise obtains, or keeps for another person, narcotic or psychotropic substances, a preparation containing a narcotic or psychotropic substance, a precursor or a poison, shall be sentenced to imprisonment for a term of from one to five years. (2) An offender shall be sentenced to imprisonment for a term of from two to ten years if: (a) he commits an act under sub-provision (1) as a member of an organised group, or on a significant scale; or (b) he commits such act against a person under eighteen years of age. (3) An offender shall be sentenced to imprisonment for a term of from eight to twelve years if: (a) by an act under sub-provision (1) he acquires a substantial benefit; (b) he commits such act against a person under fifteen years of age; or (c) by such act he causes serious injury to health. (4) An offender shall be sentenced to imprisonment for a term of from ten to fifteen years if: (a) by an act under sub-provision (1) he causes serious injury to the health of two or more persons or death; (b) by such act he acquires a large-scale benefit; or (c) he commits such act in association with an organised group active in two or more countries (states).

⁶⁶⁷ In mid-2002, the Czech Republic CC was modified to include 'spreading addiction' as a crime: those convicted of contributing to the spread of drugs through the media or Internet face up to five years in prison. U.S. Department of State, *International Narcotics Control Strategy Report 2002*, March 2003, available at <http://www.state.gov/g/inl/rls/nrcrpt/2002/html/17949.htm> (last verified on 18 February 2004).

⁶⁶⁸ Art. 204 CC (Pandering): (1) A person who procures, or seduces another for the purpose of involving that person in prostitution, or who exploits prostitution operated by another person shall be sentenced to a term of imprisonment of up to three years. (2) An offender shall be sentenced to a term of imprisonment of from one to five years if he commits an act under sub-provision (1) by using violence, the threat of violence or the threat of serious harm or by abusing another's distress or dependence. (3) An offender shall be sentenced to a term of imprisonment of from two to eight years if: (a) he acquires substantial benefit by an

internationally agreed definitions, but there is a draft of an amendment of the Criminal Code (currently being discussed by the Czech government) containing the new provision 'Trade in People' that is fully in a line with the First Protocol to the United Nations Convention against Transnational Organised Crime.

2.2. CRIMINAL PROCEDURE

The Czech procedural framework against organised crime is characterised by advanced provisions, especially with regard to special means of investigation. A wide range of means is provided for all serious crimes typically related to organised crime (interceptions, undercover operations, covert methods such as controlled delivery, etc.), provided that a judge's order is obtained. Interceptions acquired in this manner may be used as evidence in a criminal trial.

Less advanced appear to be the provisions related to confiscation. Only property confiscation is permitted for all crimes, and the national legislation does not allow a reversal of the burden of proof. Conviction is not always a requisite for confiscation provisions to apply. According to art. 73 CC the court may impose a requisition order, if it has not imposed a confiscation order in accordance with art. 55, para. 1, CC, on goods: a) belonging to a perpetrator, who can not be prosecuted or sentenced; b) belonging to a perpetrator, whose charges were waived by the court, or c) which may endanger the safety of people, property, or other similar public interests.

Law Act N. 137/2001 of the Collection of the Laws provides for provides for physical protection of witnesses and persons who give assistance to the judiciary. This law is expected to produce good results, but may be impaired by conflicting provisions at least in drug cases.⁶⁶⁹ It is not compulsory, but also not prohibited, to deploy communications technology, such as video links, to protect the safety of the witness.

2.3. DATA PROTECTION RULES

The Czech Republic has ratified the 1981 COE Convention for the Protection of Individuals with regards to the Automatic Processing of Personal Data on

act under sub-provision (1) or (2); (b) he commits such act as a member of an organised group; or (c) he commits such act against a person under the age of eighteen years. (4) An offender shall be sentenced to a term of imprisonment of from five to twelve years if he commits an act under sub-provision (2) against a person under the age of fifteen years.

Art. 216a CC (Trade in Children): (1) Whoever entrusts a child, for remuneration, to another person for the purpose of adoption, child labour or for some other purpose shall be punished by a term of imprisonment of up to three years or by a pecuniary penalty. (2) An offender shall be sentenced to a term of imprisonment of from two to eight years if: (a) he commits an act under sub-provision (1) as a member of an organised group; or (b) he acquires substantial benefit by such act. (3) An offender shall be sentenced to a term of imprisonment of from three to ten years if he causes severe injury to health, death or some other especially serious consequence by an act under sub-provision (1).

⁶⁶⁹ As reported by the U.S. Government, it appears that witnesses continue to avoid testifying in courts because of 1999 legislation under which an admission of drug possession could result in the witnesses' prosecution. See U.S. State Department, *International Narcotics Control Strategy Report 2002*, March 2003, available at <http://www.state.gov/g/inl/rls/nrcrpt/2002/html/17949.htm>.

09.07.2001. It has also concluded bilateral agreements within the framework of police cooperation including specific provisions for personal data protection with the following countries: Bulgaria, Croatia, Hungary, Slovenia, Latvia, Ukraine, Uzbekistan, Kazakhstan, Kirghizstan, Austria, France, Germany and Italy. Most notably, it has concluded a formal agreement regarding the transmission of personal data by and to Europol.

The protection of personal data is dealt with by Act n. 101 of May 2000 on the Protection of Personal Data and on Amendments to some Related Acts.⁶⁷⁰ This law applies both to law enforcement agencies and prosecution offices. They are duty-bound to ensure that personal data are not further processed in a way that is incompatible with the purposes for which data were collected. Specific security measures apply. These are not only organisational, but also technological. For instance, electronic evidence retained by law enforcement agencies and prosecutor's offices containing personal data are not open to the public and they are protected within offices by passwords. Heads of the relevant office, individual prosecutors, and members of the administrative staff are held responsible for the application of data protection rules during the investigations.

The authority, which supervises the respect of data protection rules, is the Personal Data Protection Office of Prague, which is independent and has the power of investigation, the power to bring violations of data protection rules to the attention of competent judicial authorities and to impose fines.

As to transborder flows of data, law enforcement agencies and prosecution offices are allowed to transfer data to other countries, even if these countries are not party to the 1981 COE Convention. However this transfer is strictly regulated by art. 27 of the Act n. 101 of May 2000.⁶⁷¹ In the case of judicial cooperation and only on the

⁶⁷⁰ The text of Act 101 of 2000 on the Protection of Personal Data and Amendments to Related Acts is available in the on the CD '*Legal Materials*' attached to this report.

⁶⁷¹ Art. 27 of Act 101/2000: (1) Personal data may be transferred to other countries provided that the legal regulations of the country where they are to be processed correspond to the requirements specified in this law. (2) If the condition as per paragraph 1 is not met, the transfer of personal data may be performed if (a) the transfer of personal data is carried out with the consent of, or on the basis of an instruction of a data subject entitled to issue it, (b) it is essential for the protection of the data subject's rights or the assertion of his entitlements, (c) the personal data concerned are part of public registers, or registers accessible to those who demonstrate their legal interest, however, only insofar as an individually determined data are concerned, (d) the transfer arises from an international treaty by which the Czech Republic is bound, (e) the transfer is necessary for the conclusion or performance of a contract between the data subject and controller or of a contract being concluded in the interest of the data subject, (f) it is essential for the protection of life or for the provision of health care to the data subject. (3) The transfer of personal data may be carried out in other cases, if it is done for the benefit of the data subject and if it arises from a two-party contract between the controller and the recipient, that the recipient party shall secure the requisite personal data protection. (4) The controller shall to apply to the Office for a permit to transfer of personal data to other countries, on a one-time or regular basis. The Office shall rule on the application without delay, at the latest within seven calendar days. If the Office fails to make a ruling with this period of time it is presumed that it consents to the transfer of the personal data, for the period stated in the application. If a danger due to delay is imminent, the Office shall issue its ruling without delay. An appeal against such a ruling does not have the effect of postponing the implementation of the ruling. (5) If the Office issues a ruling concerning the transfer of personal data, it also specifies the time for the controller may perform the transfer. If the controller infringes the duties specified by this law, the Office shall revoke this permit. An appeal against such a ruling does not have the effect of postponing the implementation of the ruling. (6) The controller does not have the duties under paragraphs 4 and 5 in the event that a special law so specifies.

basis of reciprocity, on August 7, 2001, the Personal Data Protection Office issued permission for judicial authorities to transmit personal data abroad concerning mutual judicial cooperation stipulated by the Criminal Procedural Code.

2.4. MULTILATERAL AND BILATERAL AGREEMENTS

a) Legislation

The Czech Republic has signed and ratified several international and European instruments for judicial and police cooperation: the European Convention on Extradition (1957 COE – ETS 024), the First additional Protocol to the European Convention on Extradition (1975 COE – ETS 086), the Second additional Protocol to the European Convention on Extradition (1978 COE – ETS 098), the European Convention on Mutual Assistance in Criminal Matters (1959 COE – ETS 030) and its first Additional Protocol (1978 COE – ETS 099).

In addition Czech officers and prosecutors may make use of the international cooperation provisions provided for in the following specific instruments against organised crime: the United Nations Convention against Illicit Traffic of Drugs and Psychotropic Substances (1988), the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990, COE – ETS 141), and the Criminal Law Convention against Corruption (1999 COE – ETS 173).

The Czech Republic has also entered into bilateral and multilateral agreements regulating international judicial assistance with all SEE countries (with the exception of Moldova): Albania (1959), Bosnia and Herzegovina (1964), Bulgaria (1976), FYRoM (1964), Hungary (1990), Moldova (1982), Serbia–Montenegro (1964), Poland (1987), Romania (1958), Slovakia (1992), Slovenia (1964) and Turkey (1931). It has also entered into bilateral judicial relations with the following EU countries: Austria (1982 and 1994), Belgium (1927), Denmark (1932), France (1931), Germany (2000), Greece (1980), Italy (1985), Luxembourg (1936), The Netherlands (1932), Portugal (1930), and Spain (1930). The Czech Republic has also ratified another 15 agreements with other countries, including the United States, Canada, Russia, and Ukraine.

Besides this international framework, Czech prosecutors are obliged to respond to foreign assistance requests according to art. 384⁶⁷² of the Criminal Procedure Code

⁶⁷² Art. 384 (Legal assistance): (1) The procedure for requesting the foreign courts and authorities for legal assistance as well as the procedure of providing legal assistance to the foreign courts and authorities in criminal matters shall be governed by the provisions of norms applicable to assistance in the civil matters, unless otherwise provided by an international agreement. (2) Based on a request from a foreign state the court may, upon proposal of the prosecutor, decide on the provisional seizure of property or a part thereof or on its forfeiture in accordance with the conditions determined in the international agreement binding the Czech Republic. The decision shall be made by the district court in the jurisdiction in which the property, that is the subject to the proposal, is located. (3) The proceedings and execution of the decision under Section 2 shall be governed by the provisions relating to the forfeiture proceedings, unless otherwise provided by the international agreement binding the Czech Republic. (4) If based on a request for legal assistance the person was handed over to the Czech Republic for execution of an action in the criminal proceedings and she/ he is to be held in custody based on the promulgated international treaty binding the Czech Republic or at the request of a foreign state, the judge of the regional court in the jurisdiction of which the act, that is the subject of the request for legal assistance, is to be executed, decides on the taking

(enacted in 1961 and last amended in 2001). Dual criminality is not requested for providing assistance.

b) Practices

In the experience of the experts interviewed, instruments of cooperation often used by Czech prosecutors are: the European Convention on Mutual Assistance in Criminal Matters and its Protocols and the European Convention on Extradition and its protocols. Also the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the Criminal Law Convention against Corruption, and the United Nations Convention against Illicit Traffic of Drugs and Psychotropic Substances (1988) are averagely used.

Of average use are also the majority of the bilateral agreements on judicial assistance above mentioned with the SEE countries, exception made for Moldova, which is rarely used. As to EU countries, bilateral agreements often used are those with Austria, Germany and Greece. The others are not used, with the exception of the agreement with Italy, which is sometimes used.

2.5. ASSISTANCE THROUGH DIRECT CONTACT

a) Legislation

Both prosecutors and police officers can enter into direct contact with their counterpart colleague in foreign countries according to formal agreements. In particular direct judicial cooperation takes place with Hungary (1990), Poland (1989), Slovakia (1993), Austria (1996), and Germany (1998).

Direct police cooperation agreements are also numerous and are stipulated with Bulgaria, Hungary, Poland, Romania, Slovakia, Slovenia, Turkey, Ukraine and Cyprus, and with the following EU countries: Austria, Belgium, France, Germany, Italy, The Netherlands, and the United Kingdom.

Czech prosecutors, when directly contacted by colleagues of another country asking for assistance, are obliged by law to forward the request for assistance to their competent colleagues, if they have no jurisdiction to implement the request. They are obliged to summon the witnesses and the experts, whose testimony is requested for by colleagues from a foreign country. Also other pieces of information and of evidence can be collected and things or proceeds of crime can be frozen in the Czech Republic under a MLA request from a foreign judicial authority. In the case of an enforcement of a foreign criminal judgement concerning confiscation of property, the Supreme Court decides upon the recognition of the foreign judgement in the Czech Republic pursuant to the appropriate international agreement binding the Czech Republic. They are also obliged to execute search warrants, and to forward extracts of bank records and criminal records, when a specific request is made. Czech prosecutors are obliged to provide assistance regarding all the special and ordinary means of investigation available in the Czech

the person into custody on the basis of a proposal filed by the state attorney. Subsection 4 of the Section 379 and subsections 3 and 5 of the Section 381 shall apply to the proceedings accordingly.

Republic, provided that there is a decision by a judge based on a public prosecutor's motion and the dual criminality requisite is fulfilled. However, undercover agents may only be Czech nationals. A foreign policeman can gather evidence in the Czech Republic only if a MLAT stipulates so.

With regards to direct police cooperation and exchange of information, Czech police officers are obliged by law to forward to competent colleagues the requests for assistance, which they have no jurisdiction over. However they cannot directly send copies of bank and phone records, documents related to vehicle ownership and documents related to criminal records. Finally, when Czech police gather information on a transnational organised crime ring, that could be useful to develop an investigation in another country, they are not obliged by law to forward that information to the authorities of the other country.

When foreign police officers start a shadowing operation in their country they can be authorised to continue it within the borders of the Czech Republic in cooperation with Czech police.

b) Practices

Czech prosecutors can enter into direct contact with their counterpart colleagues from European countries in urgent cases (art. 15, para. 2, European MLA Convention 1959). There are no other channels for judicial direct assistance as there are no liaison magistrates posted abroad.

Police officers can enter into direct contact with their foreign colleagues according to their investigative needs. Another channel for direct police cooperation are the liaison officers, who are posted to Slovakia and Russia, who help by providing direct links with foreign law enforcement authorities and by exchanging information and statistics. Their contribution to law enforcement cooperation is considered as highly useful, especially as they provide direct and quick links with partner law enforcement agencies.

No joint investigative teams are carried out in the Czech Republic.⁶⁷³ However, a recent bilateral treaty with Germany concerning judicial cooperation in criminal matters (dated February 2, 2000 which entered into force on June 19, 2002) provides for cross-border pursuit and surveillance. These provisions have already been put in place in some cases. Furthermore, the General Directorate of Customs carries out international joint customs surveillance operations.

From a practical point of view, Czech prosecutors and police officers appears to be well equipped, as they have a medium level of training. There are however some language problems in connection with international cooperation (especially for the older, more experienced police officers) and there is a partial absence of computer equipment and in particular of official e-mail accounts for police officers, which would ensure a faster cooperation.⁶⁷⁴

⁶⁷³ The possibility of setting up joint investigative teams is included in the draft of the amendments of the Criminal Procedure Code.

⁶⁷⁴ From the beginning of 2004, all public prosecutors are scheduled to receive their own computers and Intranet.

2.6. INTERNATIONAL AND REGIONAL ORGANISATIONS

a) Legislation

Interpol is the normal instrument used by Czech police officers for identifying the competent counterparts in foreign countries, and the Czech Interpol Office provides the police of other countries with the following acts of cooperation, if requested:

- information regarding investigations of crimes committed in the Czech Republic;
- information on investigations aimed at tracing goods located in the Czech Republic, which are related to a crime committed abroad;
- information regarding Czech criminal records;
- information related to the ownership of vehicles and regarding driving licenses issued in the Czech Republic;
- information regarding the ownership of Czech phone numbers.

Besides Interpol, other regional organisations, such as Europol for police cooperation, have agreements with the Czech Republic. There are also 8 contact persons at the EJM and they have regularly participated in EJM contact point meetings since December 2000. Finally, the Czech Republic has already nominated its National Member in Eurojust and his deputy, who are scheduled to start their mission at Eurojust on May 1, 2004. However, even before this, the Czech Republic had already nominated a contact person for Eurojust and has been in regular contact since May 2003.

b) Practices

According to the experience of our experts, the degree of cooperation between the Czech Republic and international/European organisations relevant for police cooperation greatly varies according to the cooperation activities needed. The following tables illustrate the level of cooperation (where 0=no cooperation, 1=low level of cooperation, 2=medium level of cooperation and 3=high level of cooperation) in the different areas in which they operate. This evaluation is based on the personal judgement of the experts interviewed.

TABLE 21. DEGREE OF COOPERATION BETWEEN THE CZECH REPUBLIC AND INTERPOL

Exchange of strategic and operational information	3
Exchange of financial information on suspected corporate entities	1
Provision of direct contacts with local law enforcement authorities	2
Provision of direct contacts with local prosecution offices	1
Exchange of information on investigative procedures and crime prevention methods	1
Training initiatives	0
Advice and support in individual investigations	2
Exchange of liaison officers	0
Participation in joint investigative teams in a support capacity	0
Participation in joint investigative teams in an operative capacity	0

TABLE 22. DEGREE OF COOPERATION BETWEEN THE CZECH REPUBLIC AND EUROPOL

Exchange of strategic and operational information	3
Exchange of financial information on suspected corporate entities	1
Provision of direct contacts with local law enforcement authorities	2
Provision of direct contacts with local prosecution offices	1
Exchange of information on investigative procedures and crime prevention methods	1
Training initiatives	0
Advice and support in individual investigations	2
Exchange of liaison officers	3
Participation in joint investigative teams in a support capacity	0
Participation in joint investigative teams in an operative capacity	0

TABLE 23. DEGREE OF COOPERATION BETWEEN THE CZECH REPUBLIC AND EJM

Provision of legal and practical information on mutual legal assistance	2
Provision of direct contacts with local law enforcement authorities	0
Provision of direct contacts with local prosecution offices	1
Exchange of information on investigative procedures and crime prevention methods	0
Training initiatives	0
Advice and support in individual investigations	2

NOTE: the EJM also provides information about foreign legislation.

3. GOOD PRACTICES

3.1. STRUCTURES SET UP FOR INTERNATIONAL COOPERATION PURPOSES

Both police officers and prosecutors normally have to channel their requests for assistance through central authorities, which are the Interpol National Bureau for police officers and the Ministry of Justice/Prosecutor General's Office for judicial cooperation. The Prosecutor General's Office also has a department uniquely devoted to international cooperation.

The above-mentioned central authorities have translators readily available for almost all languages. For official translations professional interpreters are employed. Requests for assistance are sent by mail and fax. A national standard form exists which is used by prosecutors to ask for international assistance. It takes up to three weeks on average to get an answer to an assistance request made to a foreign country.

3.2. DATABASES ON ORGANISED CRIME

The Czech Republic is well advanced as far as databases and access to them by foreign police officers are concerned. At the moment there are two centralised national databases, which contain information about persons wanted and convicted for participating in OC groups. Both of them are accessible by foreign police officers by way of Interpol or official request.

A central database of prosecuted persons for public prosecutors is currently being created.

3.3. *MODI OPERANDI*/METHODS IN THE INTERNATIONAL COOPERATION PROCESS

The Czech Republic has enacted the following *modi operandi*/methods in order to speed up the international cooperation process:

- acknowledgement of all requests and written enquiries concerning the execution of requests;
- providing the requesting authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing the request;
- setting priority to requests which have clearly been marked 'urgent' by the requesting authority;
- explaining the reasons for the urgency or deadline;
- ensuring that requests are submitted in compliance with the relevant treaty or other international arrangements;
- providing the requested authorities with the name and contact details, including telephone and fax numbers, of the authority and, if possible, the person responsible for issuing the request;

- compliance with the formalities and procedures expressly indicated by the requesting member state;
- spontaneous exchange of information;
- joint operational meetings.

4. EMERGING OBSTACLES

The analysis of legislation, practices and good practices relevant for international cooperation against organized crime has highlighted some shortcomings that are reported here for the sake of clarity, as they represent the background and rationale for the recommendations included in paragraph 5.

4.1. OBSTACLES IN LEGISLATION

1. The vagueness of the criminal definition of organised crime

The brief definition of organised crime contained in art. 163a CC only partially reflects the more detailed provisions of art. 5 of the 2000 UN Convention. In particular, the material elements of the conduct are not fully specified and there is too much room for judicial discretion in the sentencing provisions.

2. The ambiguities in the criminal definition of money laundering

The new art. 252a CC has brought many improvements to the previous definition of money laundering. However there remain some grounds for uncertainty as to whether the ‘acquisition, possession or use’ of laundered proceeds are really covered, and in relation to the mental element, it is not clear whether money laundering committed by negligence is a crime.

3. The lack of provisions on liability of legal persons

One of the most evident gaps in the legal framework against organised crime in Czech Republic is the lack of provisions related to liability of legal persons involved in criminal activities. This legal shortcoming is even more serious in the view of the high level of infiltration of organised criminals in legitimate activities and the exploitation of these covers to carry out criminal acts (e.g. use of casinos, real estate sector and so on to launder money). A draft law is currently in preparation to fill this gap.

4. The lack of updating of the current trafficking in persons definition

In the Czech Republic there is no definition of ‘trafficking in human beings’, but only provisions related to ‘pandering’ (art. 204 CC) and ‘trade in children’ (art. 216a CC). These provisions have not been updated to take into account the internationally agreed definitions. However, the Czech government is currently discussing a draft of an amendment to the Criminal Code containing a new provision ‘Trade in People’ that is fully in line with the First Protocol to the United Nations Convention against Transnational Organised Crime.

5. The gaps in the confiscation regime

The Czech confiscation regime admits only property (and not value) confiscation for all crimes, and it is not possible to put the *onus probandi* on the defendant in order to show the legal origin of his/her assets and it is always up to the prosecutor to prove this. These two aspects weaken confiscation provisions in the Czech Republic and might represent an obstacle to international cooperation regarding confiscation orders.

6. The scarcity of police and judicial direct cooperation instruments

Czech police officers are not allowed to directly send documents related to vehicle ownership, bank, phone, and criminal records, even if specifically requested by a foreign counterpart. Neither are they obliged to forward information on a transnational organised crime ring that could be useful to develop investigation in another country.

No joint investigative teams are carried out by Czech police officers in cooperation with the police of other countries.

On the side of direct judicial cooperation, there are no liaison magistrates stationed by the Czech Republic in foreign countries.

4.2. OBSTACLES IN PRACTICES

7. The inadequacy of technological means of communication available to prosecutors and police officers investigating organised crime cases

Official e-mail accounts are not available to all Czech police officers even though the situation has improved recently. The problem is not only the purchase of the technological equipment but also the high working costs (e.g. Internet, mobile phones).

8. The low level of cooperation with international and regional organisations

The Czech Republic has relations with all the international and regional organisations involved in the field of international police and judicial cooperation. However, the level of cooperation with these institutions is low in many areas of data exchange.

4.3. OBSTACLES IN GOOD PRACTICES

9. The inadequate adoption of good practices of international cooperation

The Czech Republic has not yet adopted part of the good practices indicated by European and international standards on international cooperation. These omissions might slow down the cooperation process between The Czech Republic and other countries, as these practices have proven to be very important to carry out effective international assistance. Specifically:

- giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authorities how the difficulty may be overcome;

- explaining when the assistance requested is likely to be provided;
- direct sending of procedural documents.

4.4. OTHER OBSTACLES MENTIONED BY THE EXPERTS

10. Obstacles to investigating organised crime

The experts interviewed mentioned the following as the most significant obstacles to investigating organised crime in Czech Republic:

- limited investigative powers;
- the use, by criminal organisations, of dummies, i.e. people of apparent, but no real powers over the criminal members' assets.

11. Obstacles to police assistance

The experts interviewed mentioned the following as the most significant obstacles to *police assistance* received by Czech from other countries in pre-trial investigations into transnational organised crime:

- lack of response to requests for assistance;
- delay of response to requests for assistance;
- lack of harmonisation in legislation;
- lack of financial resources.⁶⁷⁵

13. Obstacles to judicial assistance

The experts interviewed mentioned the following as the most significant obstacles to *judicial assistance* received by Czech from other countries in pre-trial investigations into transnational organised crime:

- delay of response to requests for assistance;
- lack of recognition of orders (e.g. arrest warrants) issued in another country;
- lack of harmonisation in legislation;
- in case of direct contact: difficulty in identifying the foreign competent counterpart to whom the assistance request should be addressed;
- lack of financial resources.

⁶⁷⁵ Although there are no official joint investigation teams set up, the Czech police cooperate directly with partner agencies in other countries when investigating individual cases. Operational meetings are held but cooperation is hindered by the lack of financial resources for business trips abroad and international calls etc.

5. RECOMMENDATIONS

5.1. RECOMMENDATIONS ON LEGISLATION

Recommendation n. 1

'Improving the criminal definition of participation in a criminal association'

Background and rationale

The brief definition of organised crime contained in art. 163a CC only partially reflects the more detailed provisions of art. 5 of the 2000 UN Convention. In particular, the material elements of the conduct are not fully specified and there is too much room for judicial discretion in the sentencing provisions.

Recommendation

Action should be taken to correct the criminal definition of organised crime and bring it up to the UN and internationally recognised standards.

Implementing measures

Czech legislators should consider reformulating the criminal definition of participation in a criminal association contained in 163a CC taking into account the above mentioned gaps in the current definition.

Recommendation n. 2

'Improving money laundering regime'

Background and rationale

The new art. 252a CC has brought many improvements to the previous definition of money laundering. However there remain some grounds for uncertainty as to whether the 'acquisition, possession or use' of laundered proceeds are really covered, and in relation to the mental element, it is not clear whether money laundering committed by negligence is a crime.

Recommendation

Action should be taken to improve the criminal definition of money laundering to bring it up to COE and internationally recognised standards.

Implementing measures

Czech legislators should consider modifying the criminal definition of money laundering in order to clarify the above mentioned material elements of the conduct and to lower the subjective threshold of the crime to include 'money laundering by negligence'.

Recommendation n. 3

'Establishing liability of legal persons for OC activities'

Background and rationale

One of the most evident gaps in the legal framework against organised crime in Czech Republic is the lack of provisions related to liability of legal persons involved in criminal activities. This legal shortcoming is even more serious in the view of the high level of infiltration of organised criminals in legitimate activities and the exploitation of these covers to carry out criminal acts (e.g. use of casinos, real estate sector and so on to launder money). A draft law is currently in preparation to fill this gap.

Recommendation

Action should be taken to enact provisions dealing with the responsibility of legal persons.

Implementing measures

- Czech legislators should enact the draft law on criminal liability of legal persons as soon as possible.
- Alternatively, a form of administrative liability for legal persons should be sought in order to make legal persons accountable for their participation in organised crime activities.

Recommendation n. 4

'Endorsing a trafficking in persons criminal definition'

Background and rationale

In the Czech Republic there is no definition of 'trafficking in human beings', but only provisions related to 'pandering' (art. 204 CC) and 'trade in children' (art. 216a CC). These provisions have not been updated to take into account the internationally agreed definitions. However, the Czech government is currently discussing a draft of an amendment to the Criminal Code containing a new provision 'Trade in People' that is fully in line with the First Protocol to the United Nations Convention against Transnational Organised Crime.

Recommendation

Action should be taken to endorse the internationally recognised definition of trafficking in persons.

Implementing measures

Czech legislators should enact the criminal definition of trafficking in persons contained in the new provision 'Trade in People' as soon as possible.

Recommendation n. 5

'Improving the confiscation regime'

Background and rationale

The Czech confiscation regime admits only property (and not value) confiscation for all crimes, and it is not possible to put the *onus probandi* on the defendant in order to show the legal origin of his/her assets, but it is always up to the prosecutor to prove this. These two aspects weaken confiscation provisions in the Czech Republic and might represent an obstacle in carrying out international cooperation regarding confiscation orders.

Recommendation

Action should be taken to improve the confiscation regime to make it more consistent with European and international standards.

Implementing measures

- Czech authorities should enact appropriate legislation in order to also allow value confiscation.
- The standard of proof for property forfeiture should be the lower standard appropriate in a non-criminal prosecutions.

Recommendation n. 6

'Enhancing direct channels of police and judicial cooperation'

Background and rationale

Czech police officers are not allowed to directly send documents related to vehicle ownership, bank, phone, and criminal records, even if specifically requested by a foreign counterpart.⁶⁷⁶ They are also not obliged to forward information on a transnational organised crime rings, which could be useful to develop investigation in another country.

No joint investigative teams are carried out by Czech police officers in cooperation with the police of other countries.

With regards direct judicial cooperation, there are no liaison magistrates posted by the Czech Republic to foreign countries.

Recommendation

Action should be taken to enhance direct channels of cooperation for Czech police officers and prosecutors.

Implementing measures

- Direct police cooperation should be promoted by giving the legal possibility to police officers to directly send documents related to vehicle ownership, bank, phone, and criminal records if requested by a foreign counterpart.
- Joint investigative teams should be set up in order to promote direct cooperation between the Czech police and police of other countries and the draft law on this issue should be approved as soon as possible.
- Liaison magistrates should be posted to foreign countries in order to expedite the cooperation process.

⁶⁷⁶ It should be noted, however, that Czech police officers are allowed to send information (but not the documents themselves) on vehicle ownership, phone subscribers and criminal records through Interpol. Information on bank accounts requires a request for legal assistance.

5.2. RECOMMENDATIONS ON PRACTICES

Recommendation n. 7

'Improving technological equipment available to police officers'

Background and rationale

Official e-mail accounts are not available to all Czech police officers even though the situation has improved recently. The problem is not only the purchase of the technological equipment but also the high working costs (e.g. Internet, mobile phones).

Recommendation

Action might be taken to improve at least the technological equipment available to police officers investigating TOC cases.

Implementing measures

- All police officers investigating TOC cases should be granted by their Agency an official e-mail account.
- Funds should be allocated to support the working costs of this equipment.

Recommendation n. 8

'Enhancing cooperation with international and regional organisations'

Background and rationale

The Czech Republic has relations with all the international and regional organisations involved in the field of international police and judicial cooperation. However, the level of cooperation with these institutions is low in many areas of data exchange.

Recommendation

Action should be taken to enhance cooperation with Interpol Europol, Eurojust and EJM.

Implementing measures

New operational protocols should be developed between the Czech Republic and Interpol, Europol, Eurojust and EJM focussing on the areas of cooperation where the level of assistance is lower.

5.3. RECOMMENDATIONS ON GOOD PRACTICES

Recommendation n. 9

'Enhancing *modi operandi*/methods in the international cooperation process'

Background and rationale

The Czech Republic has not yet adopted part of the good practices indicated by European and international standards on international cooperation. These omissions might slow down the cooperation process between The Czech Republic and other countries, as these practices have proven to be very important to carry out effective international assistance.

Recommendation

Action should be taken to enhance the *modi operandi*/methods in the international cooperation process.

Implementing measures

Czech authorities dealing with mutual legal assistance should adopt the following good practices:

- giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authorities how the difficulty may be overcome;
- explaining when the assistance requested is likely to be provided;
- direct sending of procedural documents.

8.13.

THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA (FYROM)⁶⁷⁷

INTRODUCTION

The Former Yugoslav Republic of Macedonia (FYRoM) borders with Albania to the west, Kosovo to the north, Bulgaria to the east and Greece to the south.

FYRoM was internationally recognised as an independent State in 1991 following the break up of Yugoslavia. It has been a UN member since 08.04.1993, a COE member since 9.11.1995 and an OSCE member since 12.10.1995. The first Macedonian law on criminal law was formally enacted on 23.07.1996 and the first Macedonian law on criminal proceedings on 26.03.1997.⁶⁷⁸ New laws, that will radically update these legal instruments against crime, are forthcoming. Among them the following are particularly relevant for the fight against organised crime: the Draft Law on Changes and Additions to the Criminal Code, the Draft Law on Changes and Additions to the Criminal Procedure Code, the draft Law on the Public Prosecution office, the Draft Law for Witness Protection and the Draft Law on the Conditions and Procedures for the Interception of Communications. In the opinion of the experts interviewed, these instruments, once they have entered into force, will bring the Macedonian criminal justice system up to internationally agreed standards and thus fill the gaps that are highlighted in the country profile below.

The Macedonian criminal justice system has a mixed nature as it has elements belonging to both the inquisitorial tradition and to the accusatorial systems. In particular, the criminal proceedings are characterised by the following principles: oral proceedings (art. 339 CCP), publicity (art. 279 CCP), presumption of innocence (art. 2 CCP), equal position of the parts in the process (art. 4 CCP). At the same time, there is no possibility for cross-examining the witnesses and private actors (defendants and victims) cannot provide evidence in the proceedings. Typical of an inquisitorial tradition is also the search for the 'material truth', as opposed to the 'proceedings truth', during the criminal process.

With specific regard to the fight against organised crime, FYRoM adopted an Action Plan for the fight against organised crime in 2003 according to which specific activities were undertaken.

Within law enforcement organisations special investigative units have been established, which deal with organised crime cases or criminal activities typically related to organised crime. They are:

⁶⁷⁷ The Macedonian country profile was based, among other materials, on the answers given by the following experts: Kiril Temelkov, Chief Inspector, Ministry of Interior, Skopje; Alexander Prcevski, Public Prosecutor, Public Prosecution of the Republic of Macedonia, Skopje. They answered to two questionnaires: one in autumn 2002 and one in summer 2003. The final revision and updating was carried out by Mr. Alexander Prcevski in May 2004.

⁶⁷⁸ Detailed information on the main Macedonian democratic institutions and its judiciary is available at: <http://www.legislationline.org> (last verified on 18 February 2004).

- the Organized Crime Department in the Ministry of interior;
- the Drug Department in the Ministry of interior;
- the Money Laundering Agency in the Ministry of finance;
- the Custom office in the Ministry of finance;
- the Finance police in the Ministry of finance.

Moreover, the adopted Police Reform Strategy (11.03.2003) provides for the establishment of a Special Department for the fight against organized crime with 10 sectors, which will work on suppression of the most grievous forms of organized crime (in the area of internal affairs).

1. THE ORGANISED CRIME SITUATION

1.1 FEATURES OF THE ORGANISED CRIMINAL GROUPS

There are between 1 and 10 organised criminal groups operating in FYRoM, with an average of 10 members each. These criminal groups are mainly made up of both nationals and non-nationals and their structure is mostly hierarchical. They mainly operate on a transnational scale and specifically in the following Eastern European countries: Albania, Bulgaria, BiH, Croatia, Serbia and Montenegro, Hungary, Moldova, Romania, Slovakia, Slovenia, Turkey, Russia and Ukraine. In addition they operate in the following EU countries: Austria, Germany, Greece and Italy. Organised groups cooperate with each other and with groups based abroad in the same countries where the activities take place (the same mentioned above except Greece, Russia, and Ukraine).

In particular, organised criminal groups from FYRoM are said to have started profitable cooperation with Albanian and Serbian criminal organisations, particularly those involved in the heroin and in the synthetic drug trade.⁶⁷⁹ Ethnic Albanians from FYRoM and Kosovo hold a big share of the drug markets in Austria, Germany, Hungary, the Czech Republic, Poland and Belgium and supply the Swiss market almost exclusively.⁶⁸⁰

1.2. ACTIVITIES OF THE ORGANISED CRIMINAL GROUPS

The criminal groups in the country are involved in a vast array of criminal activities, ranging from drugs trafficking to auto theft. One of the common *modus operandi* of organised groups is **corruption**, the scale of which is becoming a problem in FYRoM. It has evolved from passive exploitation to active coercion and has acquired the capacity to not only retard economic progress but to also feed organised crime

⁶⁷⁹ U.S. Department of State, *International Narcotics Control Strategy 2003*, March 2004, available at: <http://www.state.gov/g/inl/rls/nrcrpt/2003/> (last verified on 15 April 2004).

⁶⁸⁰ M. Muco, *Corruption and Public Governance in Southeastern European Transition countries: the case of Albania*, (revised January 2000), available at: <http://wiiwsv.wsr.ac.at/wiiwpup/muco.pdf> (last verified on 15 April 2004).

and in turn, political and communal instability.⁶⁸¹ Although the number of corrupted police and customs officials appears to have declined in 2003, the judiciary and top government officials are frequently accused of corruption and the National Anti-Corruption Commission is currently investigating related allegations.⁶⁸²

With regard to **drug trafficking**, FYRoM is increasingly becoming a transshipment point for Southwest Asian heroin and hashish and it is a minor transit point for South American cocaine destined for Europe.⁶⁸³ FYRoM is part of one of the branches of the Southern Balkan Route. Heroin originating in Afghanistan, destined for Western European markets crosses Bulgaria and Turkey, then passes through FYRoM, where it is further trafficked to the countries of the Former Yugoslavia that are used as gateways for the markets of EU countries.⁶⁸⁴ Some of the heroin that reaches FYRoM is taken to Albania and from there is transferred to various European countries.⁶⁸⁵ According to prosecutorial sources, very often the drug corridor used is the one passing through Albania and Greece to Italy and in recent years the number of the criminal cases for this illegal activity has increased. Trafficking in synthetics also increased in 2003. These cheap drugs, originating in Bulgaria and Serbia, arrive on the Macedonian market in small amounts by small vehicles.⁶⁸⁶ According to prosecutorial sources, illegal drug production is not an great concern in the Republic of Macedonia, with the exception of some cases of marihuana production.

Trafficking in persons, especially women for prostitution purposes, is also becoming a serious problem.⁶⁸⁷ As regards this kind of crime, FYRoM is mainly an origin and transit country. With regards to transit, from information from NGOs, official sources and interviews with victims, it emerges that foreign girls are trafficked through the same routes used for drug trafficking. This means that they are introduced into FYRoM from Bulgaria and are then trafficked mainly to Albania, from where they are introduced to European prostitution markets.⁶⁸⁸

⁶⁸¹ International Crisis Group(ICG) *Macedonia's Public Secret: How Corruption Drags The Country Down*, Balkans Report N. 133, 14 August 2002, available at: http://www.southeasteurope.org/documents/A400739_14082002.pdf (last verified on 15 April 2004).

⁶⁸² UNPAN, *Nations in Transit 2003: Country Report on Macedonia*, available at: <http://unpan1.un.org/intradoc/groups/public/documents/nispacee/unpan012426.pdf> (last verified on 15 April 2004).

⁶⁸³ U.S. Department of State, *International Narcotics Control Strategy 2003*, cit.

⁶⁸⁴ T. Van Der Heijden, 'Routine Activities and Drug Trafficking Via The Netherlands', paper presented at the *Modern Criminal Investigation, Organised Crime and Human Rights*, held in Durban, 3 - 7 December 2001, p. 1, available at: http://www.tsa.ac.za/conf/papers/vanderheijden_1.pdf (last verified on 15 April 2004).

⁶⁸⁵ P. Innocenti, 'Le vie della droga', in *Polizia Moderna*, n. 10, 2001.

⁶⁸⁶ U.S. Department of State, *International Narcotics Control Strategy 2003*, cit. See also Republic of Macedonia, 'Information for the fight of illegal trafficking in drugs and drug abuse in Republic of Macedonia', *Ministerial Conference on the Drug routes from Central Asia to Europe*, Paris, 21-22 May 2003, available at: <http://www.france.diplomatie.fr/routesdeladrogue/textes/arym.pdf> (last verified on 15 April 2004).

⁶⁸⁷ International reports estimate that the number of women transported through the country oscillates between 8,000 and 18,000.

⁶⁸⁸ International Crisis Group, *Albania: The State of the Nation, Part 2*, May 2000, available at: <http://www.ess.uwe.ac.uk/Kosovo/Albania2.htm> (last verified on 15 April 2004).

Macedonia has also recently become a destination country, especially in the tourist areas of Struga and Ohrid in the south and in Tetova and Gostivar.⁶⁸⁹ Besides local prostitutes 1500–2500 foreigners are believed to practice prostitution under the control of Albanian separatist.

FYRoM is not only a conduit for heroin and trafficked women, but also for **stolen vehicles** smuggled into the country in violation of tax laws. The country is a stop on a well-known trafficking route that starts in Western European countries and ends in Albania after passing through Bulgaria and FYRoM.⁶⁹⁰

The **smuggling** of migrants, tobacco, cigarettes and goods have also become increasingly serious problems in the country.⁶⁹¹

The absence of well developed financial infrastructures limits the country's utility as a **money laundering** centre.⁶⁹² However, use is made of large scale cash transactions and non-resident account transactions to launder money.⁶⁹³ Money laundering activities in FYRoM are most likely connected to financial crimes such as tax evasion, financial and privatisation fraud, bribery and corruption: only a small part is connected with narcotics trafficking.⁶⁹⁴ At the end of 2001 monetary authorities discovered a rather large sum of Italian lira in the Tetovo branch of the Stopanska Bank. The enquiry showed that the money came from illegal trade between Albanian and Italian white-collar mafia.⁶⁹⁵

⁶⁸⁹ UNICEF/UNOHCHR/OSCE, *Trafficking in Human Beings in South Eastern Europe*, UNICEF, 2003, p. 105–122, available at: http://www.osce.org/documents/odhr/2003/12/1645_en.pdf (last verified on 15 April 2004). The increase of the prostitution market might be due to the presence of personnel of international troops and organisations stationed in the Balkans. See Lehti M, *Trafficking in women and Children in Europe*, Paper n. 18, Helsinki 2003, p. 23–24, available at: <http://www.heuni.fi/uploads/to30c6cjxyah11.pdf> (last verified on 15 April 2004). See also European Bank for Reconstruction and Development, *Strategy for Bosnia and Herzegovina*, 29 April 2003, p. 12, available at: <http://www.ebrd.com/about/strategy/country/bosnherz/bosnia.pdf> (last verified on 15 April 2004); Konrad H., 'Trafficking in Human Being – The Ugly Face of Europe', paper presented at the *European Conference on Preventing and Combating Trafficking in Human Beings. Global Challenge for the 21st Century*, available at: <http://www.belgium.iom.int/STOPConfere/Conference%20Papers/11.%20Konrad%20Paper%20EC-IOM%20STOP%20Conf.doc> (last verified on 15 April 2004).

⁶⁹⁰ A. Bala, 'Car Dealers in Albania Threatened by Smugglers', in *Balkan Times*, 07 August 2002, available at: <http://www.balkantimes.com/html2/english/020730-ALBAN-001.htm> (last verified on 15 April 2004).

⁶⁹¹ European Commission, External Relations Directorate General, Directorate Western Balkans, *CARDS Assistance Programme, Former Republic of Macedonia, 2002–2006*, p. 29. The report can be downloaded at: http://europa.eu.int/comm/external_relations/see/fyrom/csp/02_06_en.pdf (last verified on 15 April 2004).

⁶⁹² U.S. Department of State, *The World Factbook 2003*, 18 December 2003, at: <http://www.cia.gov/cia/publications/factbook/geos/bu.html> (last verified on 15 April 2004).

⁶⁹³ GRECO, Evaluation Report on The Former Yugoslav Republic of Macedonia. First Evaluation Round. Strasbourg, 10 December 2002.

⁶⁹⁴ U.S. Department of State, International Narcotics Control Strategy 2003, cit.

⁶⁹⁵ 'Corruption in the Countries of South Eastern Europe, Macedonia: in the Quicksand of corruption' available at: http://www.southeasteurope.org/documents/AIM%20DOSSIERS%20CORRUPTION%20IN%20THE%20COUNTRIES%20OF%20SOUTH-EASTERN%20EUROPE_MACEDONIA.HTML (last verified on 15 April 2004).

2. LEGISLATION AND PRACTICES

A preliminary remark is necessary on this section of the Macedonian country profile. As mentioned above in the introduction, the Macedonian criminal justice system is going to undergo radical changes with the entering into force of the following instruments: the Draft Law on Changes and Additions to the Criminal Code, the Draft Law on Changes and Additions to the Criminal Procedure Code, the draft Law on Public Prosecution Office, the Draft Law for Witness Protection and the Draft Law on the Conditions and Procedures for the Interception of Communications. In the opinion of the experts interviewed, these instruments, once they have entered into force, will bring the Macedonian criminal justice system up to internationally agreed standards and thus fill the gaps that are highlighted below.

2.1. CRIMINAL LAW

The Macedonian Criminal Code (Official Gazette of Republic of Macedonia, 23.07.1996) criminalizes all the main forms of organized criminal activities: participation in a criminal association (art. 394, *Criminal association*),⁶⁹⁶ money laundering (art. 273, *Money laundering and other unlawful property gain*),⁶⁹⁷ drug trafficking (art. 215, *Unauthorised production and release for trade of narcotics, psychotropic substances and precursors*),⁶⁹⁸ trafficking in human beings (art. 418-a, *Human trafficking*).⁶⁹⁹

⁶⁹⁶ Art. 394 (Criminal association): 1. A person who creates a group or gang that has the aim of committing crimes for which a punishment of imprisonment of three years or more may be pronounced, shall be punished with imprisonment of six months to five years. 2. The member of the group or gang shall be punished with imprisonment of three months to three years. 3. A member of the group or gang, who discloses the group, respectively the gang, before he commits crime in it or for it, shall be acquitted from punishment.

⁶⁹⁷ Art. 273 (Money laundering and other unlawful property gain): 1) A person who through banking, financial or other economic operation, releases in circulation, accepts, takes over, exchanges or breaks into small change money for which he knows was acquired through trade in narcotics, trade in arms or through other punishable action, or in some other manner covers up that they originate from such sources, shall be punished with imprisonment of one to ten years. (2) The punishment from item 1 shall also apply for a person who releases in trade or in some other form of circulation property, objects of value or other goods for which he knows they have been acquired through trade in narcotics, trade in arms or through some other punishable action, or in some other manner covers up that they originate from such sources. (3) A person who commits the crime from items 1 and 2, and who was obliged to know and who could have known that the money and other goods were acquired through a punishable action, shall be punished with a fine, or with imprisonment of up to three years. (4) A person, who commits the crime from items 1 and 2 as a member of a group, gang or some other association dealing with laundering money and other property gain, shall be punished with imprisonment of at least five years. (5) The money and other direct and indirect property gain shall be confiscated, and if confiscation is not possible because they were transferred abroad, other property of the offender that corresponds to their value shall be confiscated.

⁶⁹⁸ Art. 215 (Unauthorised production and release for trade of narcotics, psychotropic substances and precursors): (1) A person who without authorization produces, processes, sells or offers for sale, or who for the purpose of selling, buys, keeps or transports, or mediates in the selling or buying, or in some other way releases for trade, without authorization, narcotics, psychotropic substances and precursors, shall be punished with imprisonment of one to ten years. (2) If the crime from item 1 was committed by several persons, or if the offender of this crime organized a network of resellers or mediators, the offender shall be punished with imprisonment of at least five years. (3) A person who without authorization manufactures, procures, mediates, or gives for use equipment, materials or substances, for which he knows that they are

FYRoM has also signed and ratified most of the relevant international and European instruments against organised crime: the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (accession on 13.10.1993), the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (signature on 14.12.1999 and ratification on 19.05.2000), the 1999 Council of Europe Criminal Law Convention on Corruption (signed and ratified on 28.07.1999).

However, FYRoM has not yet ratified the 2000 United Nations Convention against Transnational Organised Crime (signature on 12 December 2000). Regarding those instruments that have been ratified, the correspondence of the literal provisions in the Macedonian criminal code to the standards is not uniform for all the relevant criminal activities.

One of the most obvious gaps in Macedonian legislation is the absence of a specific system for the liability of legal persons involved in organised crime activities. This is a significant shortcoming as it can enable organised groups to carry out criminal activities through the shield of legal entities.⁷⁰⁰

intended for the production of narcotics, psychotropic substances and precursors, shall be punished with imprisonment of one to five years. (4) The narcotics, psychotropic substances and precursors, and the means for their production, transportation and distribution shall be confiscated.

⁶⁹⁹ Art. 418 a (Human trafficking): (1) The one that by force, serious threat and other forms of coercion, by kidnapping, by deceit and abuse of his/her own position and position of weakness of somebody else, or by giving or receiving money and other benefits in order to obtain agreement of the person that has control over persons, recruits, transports, transfers, buys and sell persons, harbours or accepts persons because of exploitation through prostitution or other forms of sexual exploitation, forced labour or servitude, slavery or similar relationship to slavery or illicit transplantation of human body parts, shall be punished with imprisonment of at least 4 years. (2) The one that recruits, transports, transfers, buys and sells, harbours or accepts children or juveniles because of exploitation as set in paragraph 1 above, shall be punished with at least 5 years imprisonment. (3) The one that organizes perpetration of the crime stipulated in paragraph 1 & 2 of this article, shall be punished with imprisonment. (4) The one that seizes or destroys personal identification card, passport or other identification document in order to commit any of the offences set in paragraphs 1&2 of this article, shall be punished with imprisonment from 6 Months up to 5 years. (5) The one that uses or enables another person to use sexual services from the person from whom he knows that are victims of human trafficking, shall be punished with from 6 months up to 5 years imprisonment. (6) If the offence from the paragraph 5 is committed against a child or a minor, the perpetrator will be punished with the at least 4 years imprisonment.

⁷⁰⁰ The lack of provisions on the liability of legal persons will be dealt with by the Draft Law on Changes and Additions to the Criminal Code. According to art. 10 of this Law, a new article (art. 28-a, Criminal Accountability of a Legal Entity, Conditions for Criminal Accountability of a Legal Entity) will be included in the criminal code, which reads as follows: (1) In the cases stipulated in the Special part of this criminal code or in another law which prescribes criminal activities, the legal entity shall be held criminally accountable if the commitment of the crime can be attributed to an activity or a failure to perform the obligatory supervision, committed by the management authority or the responsible official within the legal entity, or another person authorized to act on behalf of the legal entity within the framework of its authorizations, or when it has overstepped its authorizations in order to provide gain for the legal entity. (2) The criminal accountability of the legal entity does not abolish the accountability of the perpetrator of the crime. (3) Regarding the crimes stipulated in the law, all legal entities shall be held criminally accountable with the exception of the state. (4) Foreign legal entities shall be held criminally responsible if they have committed the crime on the territory of the Republic of Macedonia, regardless of whether they have their representative office or a branch office which performs activities on the territory of the Republic of Macedonia.

A second shortcoming is related to the criminalisation of participation in a criminal association. Art. 394 of the Macedonian Criminal Code only partially reflects the provisions of art. 5 of the 2000 United Nations Convention. In fact, even if certain aspects Macedonian law is harsher than the Convention,⁷⁰¹ the activities related to criminal associations are only two: the creation of such a group (art. 394, sec. 1) and the membership of that group (art. 394, sec. 2). It is not clear, from this text, whether other actions (namely organising, directing, aiding, abetting, facilitating and counselling), whose criminalisation is required by the UN Convention, can be included in this definition of criminal association. In other words, if a person merely facilitates, without being a member, the commission of a serious crime involving an organised criminal group, he or she might not be punished.

Regarding money laundering offences, even if art. 273 of Macedonian Criminal Code appears to cover a wide range of laundering procedures and establishes harsh penalties, the examiners of the PC-R-EV evaluation of the Council of Europe, believe that the wording of the offence should be closer to the language of the Council of Europe Convention.⁷⁰² The main gaps identified in their report concern the wording of the offence, which is very economics oriented and includes a number of concepts that do not appear to be precisely defined. The fact that the conversion of crime proceeds is only envisaged as the 'release in trade and circulation' is another cause of concern for the examiners. According to the examiners, Article 273 of the Criminal Code should also clearly state that the perpetrator of the predicate offence can be convicted both for the predicate offence and for money laundering.⁷⁰³

Regarding drug trafficking and trafficking in persons offences, the definitions included in the criminal code appear to be in line with the international and European standards. In particular, the new art. 418-a, *Human trafficking*, has been positively assessed by a recent report of the Council of Europe.⁷⁰⁴

2.2. CRIMINAL PROCEDURE PROVISIONS AGAINST ORGANISED CRIME

Approximately one hundred new criminal procedure norms are currently being prepared and will soon reform the Macedonian system.⁷⁰⁵ Many of these norms deal

⁷⁰¹ The 'serious crime', whose participation is punished according to Macedonian criminal law, is defined as the crime 'for which a punishment of imprisonment' of three years or more may be pronounced'. This means that the Macedonian 'threshold of punishability' is lower than that required by the United Nations Convention, which defines 'serious crime' as an 'offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty' (art. 2, lett. b).

⁷⁰² Council of Europe, Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV), *Annual Report 2000*, p. 18, available at http://www1.oecd.org/fatf/pdf/CoE-AR2000_en.pdf (last verified on 15 April 2004).

⁷⁰³ *Ibidem*, p. 19.

⁷⁰⁴ G. Vaz Cabral, *Opinion and Commentary on the Legal Provisions on Trafficking in Human Beings Applicable in The Former Yugoslav Republic of Macedonia*, LARA Project – Criminal Law Reform Against Trafficking in Human Beings, February 2003, available at: [http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Combating_economic_crime/Project_LARA/ExpOP\(2003\)17E-2.pdf](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Combating_economic_crime/Project_LARA/ExpOP(2003)17E-2.pdf) (last verified on 19 February 2004).

⁷⁰⁵ B. Pavišić and D. Bertaccini, *Le altre procedure penali. Transizioni dei sistemi processuali penali*, Vol. I, G. Giappichelli Editore, Torino, 2002.

with police powers during the pretrial stage for cases against transnational organised crime.

However, the current legislation is rather inadequate, as law enforcement agencies and prosecution offices almost totally lack the basic tools for an effective fight against transnational organised crime, such as the protection of victims and special means of investigation (undercover operations, controlled delivery, etc.).

First, Macedonian legislation does not provide for physical protection of witnesses who testify against organised criminal groups. In addition, no measures are taken to protect, at least indirectly, the safety of witnesses by using communication technology such as video links or other adequate means. The Law on witness protection is currently before Parliament. Although there is a lack of special laws, the Republic of Macedonia has established excellent cooperation with the SECI Center and with its member countries, through which it provides witnesses – often victims of trafficking in human beings and mediation in prostitution. A National Commission for the fight against trafficking in human beings and illegal migration has been established and has been operating in the Republic of Macedonia (with a special sub group for the fight against trafficking in children) since February 2001, along with a Secretariat of the National Commission (16.07.2003).

Second, while there is a general possibility to seize the property and proceeds gained through criminal activities (art. 97 CC), the last evaluation on the Macedonian confiscation regime by the Council of Europe is still critical regarding many aspects. As quoted by the examiners, ‘the great number of provisions and their complexity did not allow the examiners to get a clear picture of the way these provisions function in practice and their interrelationship. It is therefore very difficult to appreciate their effectiveness, especially in the context of money laundering, as they have not yet been tested [...] the examiners recommend that the Macedonian authorities should review their confiscation and provisional measures regime with a view to simplifying it and ensure that it is fully operational and effective’.⁷⁰⁶ In particular, the COE examiners suggested an intervention in the following fields: scope of application of the different provisions, the distinction between ‘objects’ and ‘property’, the definition of unclear expressions such as ‘objects which according to the Criminal Code are to be confiscated’ (art. 203 CCP), the level of proof required to trigger confiscation or apply provisional measures, the possibility of confiscating laundered proceeds in the hands of third parties and the possibility to apply provisional measures to legal persons.

Finally, one of the more notable shortcomings is the possibility to deploy special means of investigation against organised crime. In the FYRoM it is not currently possible for law enforcement agencies to use interceptions (of telephone conversations, fax transmission and Internet transmission), audio or video recording of events taking place on private premises, undercover operations, use of storefronts by investigative units and covert methods such as controlled delivery.⁷⁰⁷

⁷⁰⁶ Council of Europe, Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV), *Annual Report 2000*, *cit.*, p. 18.

⁷⁰⁷ In view of the lack of the possibility for the application of special means and methods in organized crime investigations, Constitutional amendment 19 of Article 17 of the Constitution of the Republic of Macedonia

2.3. DATA PROTECTION RULES

The Macedonian 1994 Law on Personal Data Protection was recently updated in 2002 and a new Law on Data Protection will be adopted very soon. Both law enforcement agencies and prosecution offices are duty-bound to make sure that personal data are not processed in a way which is incompatible with the purposes for which the data were originally collected. Moreover, they are obliged to apply security measures to ensure a level of security appropriate to the risks implied by the processing of data and the nature of personal data to be protected. The head of the office is ultimately responsible for the treatment of personal data by law enforcement agencies. In investigations led by prosecutors, the individual judges, prosecutors and the members of the administrative staff are responsible.

No bilateral and multilateral agreements with other states or with Europol have been concluded in the framework of police and judicial cooperation, despite the existence of an *ad hoc* authorisation by the EU Council Decision of 28 May 2002.

The enforcement of data protection rules in Macedonia is strongly impaired by the absence of primary instruments to guarantee the application of the relevant laws. First, there is no supervisory authority dealing with the protection of personal data.

Secondly, transborder flows of personal data happen without any form of control, thus impairing cooperation between Macedonia and the States that are Party to both the 1981 COE Convention for the protection of individuals and its 2001 Protocol.

2.4. MULTILATERAL AND BILATERAL AGREEMENTS

a) Legislation

A variety of sources (i.e. international and European conventions, multilateral and bilateral agreement and national law) regulate the way in which the FYRoM provide and receive assistance in pretrial investigations into transnational organised cases led by police officers and by prosecutors or investigating judges. The FYRoM signed and ratified all the international and European instruments for judicial and police cooperation. It also entered in bilateral and multilateral agreements regulating international judicial assistance with all the SEE countries and EU countries.

b) Practices

While the FYRoM ratified the most important European and international instruments for cooperation, the actual implementation of the instruments for judicial cooperation is rather poor. In fact, in the experience of the public prosecutor interviewed, two important instruments, the United Nations Convention against Illicit Traffic of Drugs and Psychotropic Substances (1988) and the Criminal Law Convention against Corruption (1998 COE - ETS 173) have had no use. The following conventions and protocols are instead commonly used in the work of public prosecutors: the European Convention on Extradition (1957 COE - ETS 024), the First additional Protocol to the European Convention on Extradition (1975 COE -

has created the legal assumption for adopting a law on the interception of communications. The law is in the review phase.

ETS 086), the Second additional Protocol to the European Convention on Extradition (1975 COE – ETS 098), European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990, COE – ETS 141), European Convention on Mutual Assistance in Criminal Matters (1959 COE – ETS 030).

2.5. DIRECT CHANNELS OF POLICE AND JUDICIAL COOPERATION

a) Legislation

No agreement or legislation exists, which provides for the direct cooperation of between prosecutors or investigating judges in other countries. On the other side, there are formal agreements for direct police cooperation with Albania (1992–2000), Bulgaria (1992–2000), Croatia (1997), Serbia–Montenegro (2003), Romania (1995), Slovenia (1995), and Turkey (1992).

Macedonian prosecutors and investigating judges, when directly contacted by colleagues of another country asking for assistance, are obliged by law to forward the request for assistance to their competent colleagues if they do not have jurisdiction to implement the request. They are also obliged to summon witnesses and experts, whose testimony is requested by colleagues from a foreign country, and to execute freezing or confiscation orders, search warrants or other ordinary and special means of investigations (interceptions, audio or video recording, undercover operations, use of storefronts by investigative units, and covert methods such as controlled delivery). Macedonian prosecutors or investigating judges are obliged to transmit extracts of bank records and criminal records when requested by a foreign colleague. However, there are no liaison magistrates in foreign countries, who can help Macedonian prosecutors or investigating judges to identify competent foreign counterparts to whom they can address a request for assistance.

Macedonian police officers are obliged to forward requests for assistance to competent colleagues when they have no jurisdiction over the request. Moreover, when Macedonian police gather information on a transnational organised crime ring that could be useful to develop an investigation in another country they are obliged by law to forward that information to the authorities of the other country. Provided a court order is issued, Macedonian police can send copies of bank records, documents related to auto vehicle ownership and documents related to criminal records. However, they cannot send phone records, even if requested. The other channels of direct police cooperation available to Macedonian prosecutors are joint investigative teams and international joint customs surveillance operations, though no liaison officers (except SECI Center liaison officers) are posted in foreign countries, who could cooperate with the local police officers in international cases.

Macedonian police officers have established joint investigative teams with the following SEE countries: Albania, Bulgaria, Serbia–Montenegro, Romania, Slovenia, and Turkey. Other joint investigative teams are established with former Russian federation states, such as Ukraine, and with EU Member States (Austria).

The international joint customs surveillance operations are even more spread out than joint investigative teams. In fact, these are carried out in cooperation with the countries mentioned above as well as Croatia, Hungary, Moldova, Belgium, Germany, Greece, Italy and United Kingdom.

b) Practices

Direct cooperation between Macedonian prosecutors and investigating judges and their foreign counterparts might be impaired by the following factors:

- low levels of training in investigating transnational organised crime;
- partial absence of technical equipments (with few exception, they have neither a computer network (intranet) or an official e-mail account available in their office).

Macedonian police officers are informed of the possibilities of using direct forms of cooperation. Some of them, namely joint investigative teams and international joint customs surveillance operations, are considered by our experts as 'highly useful' in combating transnational organised crime. However, police officers have a low level of training in investigating transnational organised crime, even if joint seminars and specialisation courses are organised with the purpose of training also on the basis of the experience of colleagues coming from different countries.

As to computer equipment, Macedonian police officers have neither a computer network (intranet) nor an official e-mail account available in their office.

2.6. INTERNATIONAL AND REGIONAL ORGANISATIONS

a) Legislation

Interpol is the normal instrument used by Macedonian police officers to identify the competent counterparts in foreign countries. The Macedonian NCB Interpol provides the police from foreign countries with the following, if requested:

- identification of individuals;
- international warrants for individuals and vehicles;
- exchange of all information relating to individuals involved in organised crime;
- information regarding investigations of crimes committed in Macedonia;
- information on investigations aimed at tracing goods located in Macedonia, which are related to a crime committed abroad;
- information regarding criminal records;
- information related to the ownership of auto vehicles and regarding driving licenses issued in Macedonia;
- information regarding the ownership of phone numbers.

At the moment, there is no agreement with Europol, however, both the EJM and Eurojust cooperate with Macedonia in the fight against organised crime. The EJM provides legal and practical information on mutual legal assistance in other countries and by exchanging information on investigative procedures and crime

prevention methods, while Eurojust gives advice and support in individual investigations.

b) Practices

According to experience of our experts, the degree of cooperation between the FYRoM and the international/European organisations relevant for police and judicial cooperation is still rather poor. To begin with, Europol has no cooperation with the FYRoM due to the absence of a formal agreement. With regard to the other organisations (Interpol, Eurojust and the EJM), the following tables illustrate the level of cooperation (where 0=no cooperation, 1=low level of cooperation, 2=medium level of cooperation and 3=high level of cooperation) in the different areas in which they operate:

TABLE 24. DEGREE OF COOPERATION BETWEEN FYROM AND INTERPOL

Exchange of strategic and operational information	1
Exchange of financial information on suspected corporate entities ⁷⁰⁸	0
Provision of direct contacts with local law enforcement authorities	1
Provision of direct contacts with local prosecution offices	0
Exchange of information on investigative procedures and crime prevention methods	1
Training initiatives	1
Advice and support in individual investigations	1
Exchange of liaison officers	0
Participation in joint investigative teams in a support capacity	0
Participation in joint investigative teams in an operative capacity	0

TABLE 25. DEGREE OF COOPERATION BETWEEN FYROM AND EUROJUST

Legal advice and assistance in cross-border cases	0
Inputs to national authorities to take steps and initiate investigations	0
Direct help in the letters of rogatory	0
Provision of direct contacts with local law enforcement authorities	0
Provision of direct contacts with local prosecution offices	0
Advice and support in individual investigations	1

⁷⁰⁸ The cooperation with Interpol relating to checks on financial transactions and money laundering is at a low level due to the fact that specific requests, on the basis of international conventions and legal provisions must be submitted through judicial authorities.

TABLE 26. DEGREE OF COOPERATION BETWEEN FYROM AND EJN

Provision of legal and practical information on mutual legal assistance	1
Provision of direct contacts with local law enforcement authorities	0
Provision of direct contacts with local prosecution offices	0
Exchange of information on investigative procedures and crime prevention methods	1
Training initiatives	0
Advice and support in individual investigations	0

3. GOOD PRACTICES

3.1. STRUCTURES SET UP WITH INTERNATIONAL COOPERATION PURPOSES

Provided the requisite of dual criminality exists, both the Criminal Procedure Code and the Law for Public Prosecution obliges prosecutors or investigating judges to respond to foreign assistance requests. Police officers and prosecutors or investigating judges normally have to channel their requests for assistance through a national centralised authority (respectively, the Ministry of Interior and the Ministry of Justice). The Ministry of Justice also has a department uniquely devoted to international judicial cooperation, while the Ministry of Interior has a unit of 'International Legal Assistance' which deals with requests for police cooperation.

These authorities send and receive requests for assistance to and from foreign countries. For this purpose, they have translators readily available who can translate a request for assistance into the language of the requested state. The requests for assistance are only sent by mail and no national standard form exists to ask for international assistance. In FYRoM it takes more than two months to get an answer to an assistance request made to a foreign State.

3.2. DATABASES ON ORGANISED CRIME

No common criminal databases have been established to share OC information collected in FYRoM with foreign counterpart colleagues.

In fact, there is no national centralised database containing information related to persons *wanted* for participating in organised criminal groups,.

However, there is a national centralised database, which contains information about persons *convicted* for participating in OC groups and foreign police officers can access the information contained in the database provided that the request for access is supported by an international agreement by Interpol or the SECI Center.

3.3. *MODI OPERANDI*/METHODS IN THE INTERNATIONAL COOPERATION PROCESS

FYRoM has enacted the following *modi operandi*/methods in order to speed up the international cooperation process:

- providing the requesting authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing the request;
- setting priority to requests which have clearly been marked 'urgent` by the requesting authority;
- explaining when the assistance requested is likely to be provided (this is made any time there is a possibility of direct communication with authorities of the requesting state)
- explaining the reasons for the urgency or deadline;

- ensuring that requests are submitted in compliance with the relevant treaty or other international arrangements;
- providing the requested authorities with the name and contact details, including telephone and fax numbers, of the authority and, if possible, the person responsible for issuing the request;
- compliance with the formalities and procedures expressly indicated by the requesting member state;
- direct sending of procedural documents;
- spontaneous exchange of information;
- joint operational meetings;
- interagency coordination protocols;
- other:

SECI Center and SEEPAG

The Republic of Macedonia has set up cooperation with the SECI Center and a network of prosecutors from the South-East region (SEEPAG). The utilization of the SECI Center facilities is considered to be a good practice, because communication with the Macedonian representative by e-mail, phone or fax is fast and effective. He can communicate directly with the other representatives and this advances the fight against organized crime. A similar type of cooperation is going to be set up among prosecutors and the hope is that it will be as useful as that of police and customs officers at the SECI Center.

4. EMERGING OBSTACLES

The analysis of legislation, practices and good practices relevant for international cooperation against organized crime has highlighted some shortcomings that are reported here for the sake of clarity, as they represent the background and rationale for the recommendations included in paragraph 5.

4.1. OBSTACLES IN LEGISLATION

1. The lack of harmonisation in the definition of organised crime

The definition of organised crime contained in art. 394 CC of the Macedonian criminal code only partially reflects the provisions of art. 5 of the 2000 UN Convention. Even if certain aspects Macedonian law is harsher than the convention, there are only two activities related to criminal associations: the creation of a group (art. 394, sec. 1) and the membership of that group (art. 394, sec. 2). It is not clear, from this text, whether other actions (namely organising, directing, aiding, abetting, facilitating and counselling), the criminalisation of which is required by the UN Convention, can be included in this definition of criminal association. In other words, if a person merely facilitates, without being a member, the commission of a serious crime involving an organised criminal group, he or she might not be punished.

2. The vagueness of the money laundering definition

Art. 273 of Macedonian Criminal Code appears to cover a wide range of laundering procedures and establishes harsh penalties. However, the wording of the offence is very economics oriented and includes a number of concepts that do not appear to be precisely defined. In particular:

- it is not clear whether the perpetrator of the predicate offence can be convicted for both the predicate offence and for money laundering.
- the conversion of crime proceeds is only envisaged as the 'release in trade and circulation'.

3. The lack of provisions on liability of legal persons

One of the most evident gaps in the legal framework against organised crime in the Republic of Macedonia is the lack of provisions related to liability of legal persons involved in criminal activities. This legal shortcoming is even more serious in the view of the high level of infiltration of organised criminals in legitimate activities and the exploitation of these covers to carry out criminal acts (e.g. use of casinos, real estate sector and so on to launder money).

4. The absence of witness protection provisions

The physical protection of witnesses who testify concerning offences committed by OC groups is not yet provided by law (the law on witness protection is still before Parliament. Additionally, no measures, such as video links or other adequate means, are taken with a view to protecting the safety of witnesses during trials.

5. The gaps in the confiscation regime

The Macedonian confiscation regime is complex and not fully consistent with European and international standards. In particular, the following elements are not clear:

- the level of proof to necessary to trigger confiscation or the application of provisional measures;
- the possibility of confiscating laundered proceeds in the hands of third parties;
- the possibility of applying provisional measures to legal persons.

6. The inadequacy of the special investigative means apparatus

In FYRoM it is not currently possible for law enforcement agencies to use interceptions (of telephone conversations, fax transmissions and Internet transmissions), audio or video recording of events taking place on private premises, undercover operations, storefronts by investigative units and covert methods such as controlled delivery.

7. The lack of data protection agreements

FYRoM has not yet ratified the 1981 COE Convention and relative data protection provisions. Furthermore, it has not concluded bilateral agreements for police and judicial cooperation containing provisions to protect personal data. There is no supervisory authority dealing with data protection and the transfer of data to countries, which are not party to the 1981 convention is largely unregulated.

The absence of such legal instruments and measures for data protection obstructs police and judicial cooperation with the countries that have enacted a data protection regime and are party to the 1981 COE Convention. It also impairs the exchange of information with Europol.

8. The absence of bilateral police and judicial cooperation agreements

Although Macedonia has ratified many multilateral instruments of police and judicial cooperation, bilateral agreements are absent. The lack of bilateral instruments with all neighbouring countries might impair the cooperation process at a practical level, because through the deployment of solely multilateral instruments, it is not possible to reach the level of definition and detail achieved by bilateral agreements.

9. The scarcity of police direct cooperation instruments

Macedonian police officers do not have the legal possibility to directly send phone records if requested by a foreign counterpart. Additionally, except for SECI Center, there are no liaison officers stationed by Macedonia in foreign countries who might expedite the cooperation process,.

10. The absence of liaison magistrates posted abroad

There are no liaison magistrates posted by Macedonia to foreign countries. These are important tools for direct judicial cooperation as they can expedite the cooperation process and the exchange of information.

4.2. OBSTACLES IN PRACTICES

11. The absence of operative protocols for cooperation with international and regional organisations

The level of cooperation with Interpol, Europol, Eurojust, and EJN is rated very low. These regional organisations could enhance data exchange and cooperation between European countries, but the lack of cooperation agreements or operative protocols impedes this form of cooperation.

12. The low level of training in investigating TOC cases

The level of training of Macedonian police officers and prosecutors in investigating TOC cases is rated low. This lack of knowledge impedes the common use of some channels of exchange of information and cooperation.

13. The inadequacy of technological means of communication available to prosecutors and police officers investigating organised crime cases

Computer networks (intranets) and official e-mail accounts are not available to all Macedonian prosecutors/judges and police officers investigating OC cases.

4.3. OBSTACLES IN GOOD PRACTICES

14. The lengthiness of the assistance procedures through central authorities

Central authorities managing requests for international cooperation do not use email or fax to send requests for cooperation. This combined with the fact that they do not use a national standard form to ask for international assistance may explain why it takes so long to get an answer (more than two months).

15. The absence of common criminal databases

No common criminal database has yet been established in FYRoM on OC. There is instead a national centralised database, which contains information about persons convicted of participating in organised criminal groups, and a foreign police officer can access the information contained in the database, provided that the request of access is supported by an international agreement, or by Interpol or the SECI Center. As to information related to persons wanted for participating in organised criminal groups, it has not yet been collected in a national centralised database.

The absence of such instruments impedes a rapid exchange of information with foreign colleagues on OC groups.

16. The partial adoption of good practices of international cooperation

FYRoM has not yet adopted part of the good practices indicated by European and international standards on international cooperation, and in particular:

- acknowledgement of all requests and written enquiries concerning the execution of requests;

- providing the requested authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for issuing the request;
- giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authorities how the difficulty may be overcome.

These omissions might slow down the cooperation process between FYRoM and other countries, as these practices have proven to be very important to carry out effective international assistance.

4.4. OTHER OBSTACLES MENTIONED BY THE EXPERTS

17. Obstacles to investigating organised crime

The experts interviewed mentioned the following as the most significant obstacles to investigating organised criminal groups:

- lack of legislation (in particular on means of investigation and witness protection);
- lack of material resources in the offices participating in organised crime investigations.

18. Obstacles to police assistance

The experts interviewed mentioned the following as the most significant obstacles to *police assistance* received by FYRoM from other countries in pre-trial investigations into transnational organised crime:

- delay of response to requests for assistance;
- lack of harmonisation in legislation;
- language problems;
- lack of financial resources;
- lack of training.

19. Obstacles to judicial assistance

The experts interviewed mentioned the following as the most significant obstacles to *judicial assistance* received by FYRoM from other countries in pre-trial investigations into transnational organised crime:

- lack of harmonisation in legislation;
- lack of human resources;
- lack of financial resources;
- lack of training.

4. RECOMMENDATIONS

4.1. LEGISLATIVE RECOMMENDATIONS

Recommendation n. 1

'Improving organised crime criminal definition'

Background and rationale

The definition of organised crime contained in art. 394 CC of the Macedonian criminal code only partially reflects the provisions of art. 5 of the 2000 UN Convention. Even if certain aspects Macedonian law is harsher than the convention, there are only two activities related to criminal associations: the creation of a group (art. 394, sec. 1) and the membership of that group (art. 394, sec. 2). It is not clear, from this text, whether other actions (namely organising, directing, aiding, abetting, facilitating and counselling), the criminalisation of which is required by the UN Convention, can be included in this definition of criminal association. In other words, if a person merely facilitates, without being a member, the commission of a serious crime involving an organised criminal group, he or she might not be punished.

Recommendation

Action should be taken to correct the criminal definition of organised crime and bring it up to the UN and internationally recognised standards.

Implementing measures

FYRoM should reformulate the criminal definition of organised crime contained in 394 CC taking into account the above mentioned gaps in the current definition.

Recommendation n. 2

'Improving money laundering regime'

Background and rationale

Art. 273 of Macedonian Criminal Code appears to cover a wide range of laundering procedures and establishes harsh penalties. However, the wording of the offence is very economics oriented and includes a number of concepts that do not appear to be precisely defined. In particular:

- it is not clear whether the perpetrator of the predicate offence can be convicted for both the predicate offence and for money laundering.
- the conversion of crime proceeds is only envisaged as the 'release in trade and circulation'.

Recommendation

Action should be taken to expand the criminal definition of money laundering and bring it up to the COE and internationally recognised standards.

Implementing measures

Macedonian legislators should modify article 273 of the Criminal Code which should also clearly state that the perpetrator of the predicate offence can be convicted for both the predicate offence and for money laundering, and that conversion of crime proceeds is to be considered for a broader range of activities.

Recommendation n. 3

'Establishing liability of legal persons for OC activities'

Background and rationale

One of the most evident gaps in the legal framework against organised crime in the Republic of Macedonia is the lack of provisions related to liability of legal persons involved in criminal activities. This legal shortcoming is even more serious in the view of the high level of infiltration of organised criminals in legitimate activities and the exploitation of these covers to carry out criminal acts (e.g. use of casinos, real estate sector and so on to launder money).

Recommendation

Action should be taken to enact provisions dealing with the responsibility of legal persons.

Implementing measures

- Macedonian legislators should include in the criminal code or in the special legislation against organised crime provisions on liability of legal persons engaging in organised crime activities.
- Alternatively, a form of administrative liability for legal persons should be sought in order to make legal persons accountable for their participation in organised crime activities.

Recommendation n. 4

'Enacting witness protection provisions'

Background and rationale

Physical protection of witnesses who testify concerning offences committed by OC groups is not yet provided by law (the law on witness protection is still before Parliament. Additionally, no measures, such as video links or other adequate means, are taken with a view to protecting the safety of witnesses during trials.

Recommendation

Action should be taken to enact witness protection provisions.

Implementing measures

- FYRoM should enact the draft law on witness protection as soon as possible;
- The existing cooperation with the SECI Center should be further enhanced to protect witness of trafficking and also privileged witnesses of organised crime activities.

Recommendation n. 5

'Improving the confiscation regime'

Background and rationale

The Macedonian confiscation regime is complex and not fully consistent with European and international standards.

Recommendation

Action should be taken to improve the confiscation regime to make it clearer and more consistent with European and international standards.

Implementing measures

Macedonian authorities should enact appropriate legislation clarifying the following items:

- the level of proof necessary to trigger confiscation or the application of provisional measures;
- the possibility of confiscating laundered proceeds in the hands of third parties;
- the possibility to apply provisional measures to legal persons.

Recommendation n. 6

'Empowering law enforcement agencies with special means of investigation'

Background and rationale

In the FYRoM it is not currently possible for law enforcement agencies to use interceptions (of telephone conversations, fax transmissions and Internet transmissions), audio or video recording of events taking place on private premises, undercover operations, storefronts by investigative units and covert methods such as controlled delivery.

Recommendation

Action should be taken to empower law enforcement agencies with special means of investigation.

Implementing measures

- The Law on interception of communications, currently being discussed before its submission to Parliament, should be approved as soon as possible.
- Other pieces of legislation empowering law enforcement with more efficacious means of investigation, such as audio or video recording of events taking place on private premises, undercover operations, the use of storefronts by investigative units and covert methods (e.g. controlled delivery) should be put in place.

Recommendation n. 7

'Enacting data protection rules and concluding agreements on data exchange'

Background and rationale

FYRoM has not yet ratified the 1981 COE Convention and relative data protection provisions. Furthermore, it has not concluded bilateral agreements for police and judicial cooperation containing provisions to protect personal data. There is no supervisory authority dealing with data protection and the transfer of data to countries, which are not party to the 1981 convention is largely unregulated. The absence of such legal instruments and measures for data protection obstructs police and judicial cooperation with the countries that have enacted a data protection regime and are party to the 1981 COE Convention. It also impairs the exchange of information with Europol.

Recommendation

Action should be taken to enact data protection rules and conclude agreements on data exchange with Europol and neighbouring countries.

Implementing measures

- The Macedonian Parliament should enact the new Law on Data Protection as soon as possible.
- The 1981 COE Convention should be signed and ratified.
- The Macedonian government should conclude agreements on data protection with Europol and neighbouring countries for police and judicial cooperation.
- A supervisory authority should be established to deal with data protection.

Recommendation n. 8

'Concluding agreements on police and judicial cooperation with all neighbours'

Background and rationale

Although Macedonia has ratified many multilateral instruments of police and judicial cooperation, bilateral agreements are absent. The lack of bilateral instruments with all neighbouring countries might impair the cooperation process at a practical level, because through the deployment of solely multilateral instruments, it is not possible to reach the level of definition and detail achieved by bilateral agreements.

Recommendation

Action should be taken to conclude bilateral agreements on police and judicial cooperation with all neighbouring countries.

Implementing measures

The Macedonian government should conclude bilateral agreements on police and judicial cooperation with all its neighbouring countries.

Recommendation n. 9

'Enhancing the channels of direct police cooperation'

Background and rationale

Macedonian police officers do not have the legal possibility to directly send phone records if requested by a foreign counterpart.

Additionally, except for the SECI Center, there are no liaison officers stationed by Macedonia in foreign countries who might expedite the cooperation process.

Recommendation

Action should be taken to enhance direct channels of cooperation for Macedonian police officers.

Implementing measures

- Direct police cooperation should be promoted by giving the legal possibility to police officers to directly send bank records if requested by a foreign counterpart.
- Macedonia should post liaison officers abroad, especially in the countries where most of the requests for assistance are addressed.

Recommendation n. 10

'Enhancing the channels of direct judicial cooperation'

Background and rationale

There are no liaison magistrates stationed by Macedonia in foreign countries, who might expedite the cooperation process.

Recommendation

Action should be taken to enhance direct channels of cooperation for Macedonian prosecutors/investigating judges.

Implementing measures

Liaison magistrates should be posted abroad, especially in the countries where most of the requests for assistance are addressed, in order to expedite the process of cooperation.

5.2. RECOMMENDATIONS ON PRACTICES

Recommendation n. 11

'Updating technological equipment available to police officers/prosecutors'⁷⁰⁹

Background and rationale

Computer networks (intranets) and official e-mail accounts are not available to all Macedonian prosecutors/judges and police officers investigating OC cases.

Recommendation

Action should be taken to improve the technological equipment available to police officers and prosecutors/judges investigating TOC cases.

Implementing measures

All prosecutors/judges and police officers investigating TOC cases should be provided with a computer network and an official e-mail account by their Agency.

⁷⁰⁹ Suggestion also made by the police expert.

Recommendation n. 12

'Improving the level of training of prosecutors and police officers'

Background and rationale

The level of training of Macedonian police officers and prosecutors in investigating TOC cases is rated low. This lack of knowledge impedes the common use of some channels for the exchange of information and cooperation.

Recommendation

Action should be taken to provide training in investigating TOC.

Implementing measures

Training courses and seminars should be organised on the most relevant forms of TOC.

Recommendation n. 13

'Enhancing the level of cooperation with international and regional organisations'

Background and rationale

Apart from the SECI Center, the level of cooperation with Interpol, Europol, Eurojust, and EJM is rated very low. These regional organisations could enhance data exchange and cooperation between European countries, but the lack of cooperation agreements or operational protocols impedes this form of cooperation.

Recommendation

Action should be taken to promote cooperation with international and regional organisations.

Implementing measures

- A cooperation protocols and contacts with Interpol/Europol/Eurojust/EJM should be made operational.
- Training courses and seminars should be organised for middle level officers to enhance knowledge about the possibilities of cooperation with international and regional organisations.

5.3. RECOMMENDATIONS ON GOOD PRACTICES

Recommendation n. 14

'Improving technological equipment available to central authorities'

Background and rationale

Central authorities managing requests of international cooperation do not use email or fax to send requests for cooperation. This combined with the fact that they do not use a national standard form to ask for international assistance may explain why it takes so long to get an answer (more than two months).

Recommendation

Action should be taken to improve the means adopted to send the requests for cooperation and to standardise the forms for requesting assistance.

Implementing measures

Central authorities should be able to use fast methods of communication to send requests for cooperation.

Recommendation n. 15

'Establishing common and national criminal databases and rendering them accessible to foreign officers investigating TOC cases'

Background and rationale

No *common* criminal database has yet been established in FYRoM on OC. There is instead a national centralised database, which contains information about persons *convicted* of participating in organised criminal groups, and a foreign police officer can access the information contained in the database, provided that the request for access is supported by an international agreement, or by Interpol or the SECI Center. As to information related to persons *wanted* for participating in organised criminal groups, it has not yet been collected in a national centralised database. The absence of such instruments impedes a rapid exchange of information with foreign colleagues on OC groups.

Recommendation

Action should be taken to establish common criminal databases and render the existing national databases accessible to foreign officers investigating TOC cases.

Implementing measures

- A common database should be established to exchange information with foreign countries on organised crime;
- a national centralised database, which contains information about persons wanted for participating in organised criminal groups, should be established and made accessible by foreign police officers and prosecutors.

Recommendation n. 16

'Enhancing *modi operandi*/methods in the international cooperation process'

Background and rationale

FYRoM has not yet adopted a large part of the good practices indicated by European and international standards on international cooperation. These omissions might slow down the cooperation process between FYRoM and other countries, as these practices have proven to be very important to carry out effective international assistance.

Recommendation

Action should be taken to enhance the *modi operandi*/methods in the international cooperation process.

Implementing measures

Macedonian authorities dealing with mutual legal assistance should adopt the following good practices:

- acknowledgement of all requests and written enquiries concerning the execution of requests;
- providing the requested authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for issuing the request;
- giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authorities how the difficulty may be overcome.

8.14.

TURKEY⁷¹⁰

INTRODUCTION

Turkey is located in South–Eastern Europe and South–Western Asia between Greece and Syria. It borders the Black Sea, Bulgaria, Georgia and the Aegean and Mediterranean seas.

Turkey is a republican parliamentary democracy. It became a member of the Council of Europe on 09.08.1949 and a United Nations member on 04.10.1945. Its Constitution was enacted on 07.11.1982.

The criminal code was enacted on 13.03.1926. Two new articles namely 201a and 201b were added in 2002 which envisage severe punishments for the crimes of smuggling of migrants and trafficking in human beings. The criminal procedure code was enacted on 20.04.1929. A new criminal code is in the process of being approved by Parliament.⁷¹¹

Although the Turkish criminal justice system is similar to the inquisitorial system, it actually involves both accusatorial and inquisitorial elements. The proceedings of investigations are not disclosed to the public but the suspect and his/her lawyer has the right of disclosure of the proceedings. Before the court, both sides are equal. The judge plays a proactive role during the trial to determine whether the suspect is guilty or not according to the evidence.

As regards to the organisation of law enforcement, special investigative units have been established which deal with organised crime cases or criminal activities typically related to organised crime. They are the Anti–Smuggling and Organised Crime Department of the Turkish National Police and its divisions in 81 provinces and 24 districts across Turkey. Also, worth mentioning are two other law enforcement units working under the Ministry of Interior: the General Command of Gendarmerie which has a military structure, responsible in the rural areas, and the Coastguard Command, responsible in territorial waters.

⁷¹⁰ The Turkish country profile was based, among other materials, on the answers given by the following experts: Mr. Omer Ersoy, Inspector, Ministry of Interior, Ankara; Mr. Metin Eksi, Chief Inspector, Ministry of Interior, Ankara. They answered to two questionnaires: one in autumn 2002 and one in summer 2003. The final revision and updating was carried out by Mr. Omer Ersoy in June 2004.

⁷¹¹ At the time of printing (October 2004), the new criminal code was passed by the Parliament and will come into force in April 2005.

1. THE ORGANISED CRIME SITUATION

1.1. FEATURES OF THE ORGANISED CRIMINAL GROUPS

More than 50 organised criminal groups are active in the country. These groups mostly consist of uneducated young people who do not have sufficient income. Most of the members of these groups are aged between 20 and 40. In the composition of criminal groups the origins play an important role which means that the criminals operating in the same criminal group are generally from the same region.

The structure of these groups is traditionally hierarchical,⁷¹² especially for drug smuggling activities, where there is a division of labour among the members. Not only does the division of duties exist within the body of the organisation, but also among the organisations. Some drug trafficking organisations are responsible for supply, some for transportation, some for distribution and others for marketing. Apart from this, a division of labour among individuals also exists.⁷¹³

The day-to-day operations of drug trafficking organisations in Turkey have become more and more systematic over time and some issues have emerged from within this system. It has been identified that drug organisations:

- have generally based their illegal activities on their ties of kinship and have established commercial relationships in order to strengthen their position in the region;
- have a hierarchical structure within the organisation, that the organisation members are subject to strict discipline with feelings of loyalty and obedience and a punishment system exists within the organisation;
- have a relationship with other criminal organisations and make contacts with the heads of these organisations and the organisers using several middlemen in all of their activities;
- have generally divided tasks amongst themselves into divisions such as 'Acid Suppliers' (individuals who supply the acetic anhydride used in the production of narcotics), 'Transporters' (individuals who transport drugs in and out of the country); 'Suppliers' (individuals who supply drugs from Southwest Asia) and they act in mutual cooperation. In this way these groups do not intrude on each other's interests and they can perform smuggling activities more securely; however, division of tasks among drug groups is not always present;
- have connections with terrorist organisations;

⁷¹² According to the police expert, among organised criminal groups there are benefit-oriented criminal groups called 'mafia groups'. These have a group leader who demands absolute obedience. There is an internal punishment system within the group. Having a past criminal record and being convicted has a value in the hierarchical structure. The families of the members of the group who are sent to prison are taken care of by the leader of the group. This behaviour reinforces loyalty to the group.

⁷¹³ Materials for EMCDDA web site about candidate countries, *Summary of the Turkish Drug Report 2001*, available at: <http://candidates.emcdda.eu.int/2002-ceecs-report/section-2-about-ceecs/turkey/turkey-nr-2001-en.doc> (last verified on 7 April 2004).

– have established shelf companies in order to launder illegal profits obtained from drug trafficking and have invested in various sectors.⁷¹⁴

Turkish organised criminal groups have built up a sophisticated distribution network. ‘Subcontractors’ of Turkish criminal groups recruit couriers from among young petty criminals in central and some western European countries. Although, in some cases, these couriers seemed to know one or two individuals in the organization to make contacts, they are not generally aware of the structure of the criminal group and constitute just one element of the organization.

There is little evidence of non-indigenous groups having permanent bases in Turkey.⁷¹⁵ In Turkey there are different organised criminal groups with international links. Turkish criminal groups have established themselves mainly in Istanbul and other large Turkish cities and maintain links with Turkish immigrant communities in Germany and other European countries, including the Netherlands. Other players are Iranian traffickers⁷¹⁶. All the groups are active in drug pushing, prostitution, protection rackets, Money laundering and the trade in false documents.

Turkish criminal groups maintain a physical presence in several foreign countries. A presence of Turkish criminals has been detected in Bulgaria, and Bulgarian criminals are said to be present in Turkey. Bulgaria is one of the most important locations and is crossed by heroin passing through Turkey for western European countries and it is also a transit point for precursors heading to Turkey from European countries. Therefore it is possible that these kinds of traffics are managed by Turkish and Bulgarian groups together and that the presence of Bulgarian criminals on Turkish soil occurs in order to carry out these activities with the highest possible degree of cooperation.

In Austria the main types of crimes committed by Turkish offenders consist of crimes of violence, property offences and trafficking in persons and arms. Criminal activities are frequently accompanied by violent actions, especially in Asian ethnic associations.⁷¹⁷ The importation, transit and distribution of heroin in Belgium are mainly under the control of Turkish criminal networks. Most of these criminal networks are formed by Turkish nationals who have an average age of 40 years. They have a very rigid structure and much of the time the members belong to the

⁷¹⁴ Materials for EMCDDA web site about candidate countries.

⁷¹⁵ Library of Congress, *Nations Hospitable to Organised crime and Terrorism*, Washington, October 2003, available at: http://www.loc.gov/rr/frd/pdf-files/Nats_Hospitable.pdf (last verified on 10 June 2004). p. 142–143.

⁷¹⁶ Materials for EMCDDA web site about candidate countries, cit.: ‘Iranian traffickers took the lead with a 60% arrest rate in 2000–2001 in Turkey. In 2000, 6.180 kg of heroin, 20.275 kg of morphine base and 31.581 kg of opium seizures in Iran show that the country is still important in opiate trafficking. In fact, Iranian organisations have begun to deliver heroin to other organisations not only in the western part of Turkey but also in Europe’. ‘Operation Sefer, in which a large amount of heroin was seized, revealed that Iranian traffickers smuggled the bulk of heroin into Turkey. As a result of Operation Sefer, 227 kg of heroin were seized at the Gurbulak border crossing of the Agri province in caches in a bus, which entered into Turkey overland through Iran. A total of 10 persons, including 4 Iranians who proved to be providers and transporters of the shipment, were arrested’.

⁷¹⁷ EUROPOL, *2003 European Union Organised Crime Report*, Luxembourg, 2003, available on the Europol site at: http://www.europol.eu.int/publications/EU_OrganisedCrimeSitRep/2003/EUOrganisedCrimeSitRep2003.pdf (last verified on 22 March 2004), p. 18.

same family. Lorry drivers bring most of the heroin into Belgium through the Balkan route.⁷¹⁸

Turkish groups are among the major components of organised crime in Germany.⁷¹⁹ In 1998 Turkish heroin trafficking organisations dominated drug trafficking and smuggling and most violent crimes were committed by German, Vietnamese and Turkish nationals.⁷²⁰

In the Netherlands, Turkish organised criminal groups are involved in the heroin trade, mainly on the wholesale and smuggling side of this drug; they leave retail and street dealing to others.⁷²¹

Turkish criminal groups are involved in narcotics at all levels in Denmark. Turkish and ethnic Albanian groups also dominate the Norwegian heroin market.⁷²²

In the United Kingdom Turkish organised crime groups are primarily responsible for wholesale heroin distribution but they are also involved in other criminal activities within the UK: firearms trafficking, illegal immigration and vehicle theft. The heroin trade is largely based on importation and wholesale distribution and trafficking is dominated by a small number of organisations, with a larger number of lesser criminals also involved.⁷²³

1.2. ACTIVITIES OF THE ORGANISED CRIMINAL GROUPS

Turkey has to deal with various forms of transnational crime due to it being a crossroads for Asia, the Middle East and Europe, its borders with eight countries and has 5,000 miles of coastline.⁷²⁴

First of all, Turkey's geographical position makes it an important transit route for Southwest Asian **opiates** moving to Europe and North America.⁷²⁵ The Balkan route,

⁷¹⁸ Ibidem.

⁷¹⁹ 'Turkish groups of offenders can be considered the most important organised crime groups in Germany. This is certainly due to the fact that, in Germany, they can fall back on structures that have evolved over the course of time. In their fight against Turkish organised criminal groups, it is probably a disadvantage for the law enforcement agencies that these groups often concentrate on a single type of offence (heroin trafficking) and that it is evidently not very difficult to procure the respective illegal substances. In addition, investigative work is more difficult due to their well-developed logistics, most of which are located outside of Germany, as well as to smoothly functioning distribution structures', *ibidem*.

⁷²⁰ Ibidem.

⁷²¹ EUROPOL, *2003 European Union Organised Crime Report*, p. 31.

⁷²² European Committee on Crime Problems (CDCP), Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime, *Report on the Organised Crime Situation in Council of Europe Member States*, Council of Europe, Strasbourg, December 2000, available at: http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/Organised_crime/Documents/Report1999E-2.pdf. (last verified on 7 April 2004).

⁷²³ EUROPOL, *2003 European Union Organised Crime Report*, p. 89.

⁷²⁴ Turkish Ministry of Foreign Affairs, *Updated Country Report of Turkey on Illegal Migration*, February 2004, available at: <http://www.mfa.gov.tr/grupa/ac/acb/IllegalMigration.htm> (last verified on 7 April 2004).

⁷²⁵ US Department of State, *International Narcotics Control Strategy Report 2003*, March 2004, available at <http://www.state.gov/g/inl/rls/nrcrpt/2003/vol1/html/29838.htm> (last verified on 7 April 2004).

the Northern Black Sea and the Eastern Mediterranean routes emerge as the main drug trafficking routes affecting Turkey.⁷²⁶ Illegal drug trafficking between Europe and Asia is not one way. Therefore, Turkey is subjected to a dual flow and is affected by the trafficking of natural drugs from East to West and also by the smuggling of chemicals and synthetic drugs from West to East.

One of the main routes leaves Turkey at Edirne and then passes through Bulgaria and FYRoM. From Bulgaria, the route branches off to Hungary, Austria and Germany (and then into the Netherlands, Belgium and the UK), or Italy, Switzerland (via Zurich) and France.

Most of the drugs originating in Afghanistan⁷²⁷ and South West Asia pass through the Central Asia Republics and Iran, then proceed on the Northern Black Sea⁷²⁸ route and reach the markets of Western Europe.

The Kurdistan workers Party (PKK/ KONGRA-GEL), a terrorist organization, regards heroin smuggling as an important financial source, therefore it is heavily involved in smuggling activities in the southeast region of Turkey through which much of the heroin passes. The PKK reportedly takes a commission from the traffickers moving drugs through border crossings with Iran and throughout the territory in south-eastern Turkey. Furthermore, the PKK takes part in the activities of smuggling and selling drugs in Europe.⁷²⁹

According to recent reports, there is no evidence of the diversion of licit opium cultivation and pharmaceutical morphine production.⁷³⁰

The country remains an important transit route in the region's heroin trade along the various Balkan routes into the European Union. Narcotics brokers in Turkey are able to buy heroin from producers in Southwest Asia⁷³¹ and transport the drug to distribution networks in Europe.⁷³² As regards the amount of heroin seized in

⁷²⁶ Ibidem. See also Allum F., Sands J., cit., p. 146: '[...] when the Turkish government began to eliminate domestic production during the 1970s, those involved in the business shifted their attentions to the trafficking of opiates from the Golden Triangle and Golden Crescent. Their principal activity is thus the trafficking of heroin and other opiates, which involves them being active on a global scale'.

⁷²⁷ According to the figures issued by UNODC, nearly 90% of heroin in Europe originates in Afghanistan.

⁷²⁸ Most experts, according to the following references, believe the Northern Black Sea route has become an important alternative to the Balkan route and is utilized extensively in drug trafficking. In: 138th Southeast Working Group held in Istanbul on 08–09 May 2001; 136th meeting of Near and Middle East Sub Commission on Illegal Drug Trade held in Abu Dhabi on 04–07 November 2001; 2000 Annual Report of the International Narcotics Control Board, Report of the United Nations Drug Control Program on 'Global Impact of Opium Cultivation Ban in Afghanistan' of 2001.

⁷²⁹ 'PKK members in Europe have been involved in wholesale and retail distribution of heroin, as well as other criminal activities, to help fund their operations. Some may funnel narcotics and criminal proceeds into party coffers. It is unclear, however, whether or to what extent the PKK central command may direct or participate in such activities, or has ties to other drug-trafficking groups in Turkey', *ibidem*.

⁷³⁰ U.S. Department of State, *International Narcotics Control Strategy Report 2003*, cit.

⁷³¹ 'Criminal groups from Turkey and also Afghanistan, Iran and Pakistan have gradually extended their influence in the heroin production region, partly replacing indigenous groups', EUROPOL, *1998 EU Organised Crime Situation Report*, The Hague, 3 February 2000, p. 32.

⁷³² US Department of State, *International Narcotics Control Strategy Report 2002*, cit., p. 81.

European countries, Turkey remains the predominant country in Europe also due to the effective work of law enforcement units which are well equipped with the trained personnel and relevant legislation.

In recent years the country has started to become more affected by the smuggling of **synthetic drugs**. The synthetic drug commercially named *captagon* has a large number of users in Arabic countries⁷³³ and therefore the *captagon* produced in clandestine laboratories in Europe has started to be shipped to Arabic countries through Turkey. A major part of the *captagon* is brought into Turkey from countries such as Bulgaria, Romania and Germany.⁷³⁴

In Turkey drug trafficking remains one of the largest sources of illegal earnings.⁷³⁵ After drugs, the crimes which generate the greatest amounts of illicit proceeds are: use of falsified invoices, smuggling of weapons and explosive materials, smuggling of historical works and smuggling of items of cultural importance.⁷³⁶ Turkish traffickers control an important portion of the European heroin trade and huge amounts of illicit drug proceeds are consequently spirited out of Europe into Turkey.

Despite the great amount of illicit funds generated, Turkish based drug organisations are allegedly responsible only for a small part of the money laundering taking place in Turkey, as tax evasion seems to be more strictly liked with it.⁷³⁷ It seems that the most common **money laundering** methods used involve the cross-border smuggling of currency, bank transfers into and out of the country, the purchase of highly-priced items such as real estate, gold,⁷³⁸ luxury automobiles and other vehicles. Illicit funds are also integrated into the economy through the financing of the construction of large apartment complexes and other buildings.⁷³⁹

Turkey, long known as a country of emigration, has also become a country of immigration and a transit for many refugees and migrants. Specifically, Turkey is seen to be subject to illegal immigration, most commonly from the Middle East and Asian countries including Afghanistan, Bangladesh, Iraq, Iran and Pakistan. Unfortunately, it has also become a destination and a transit country for the **trafficking of human beings** for the purposes of sexual exploitation and labour. Usually women and girls trafficked to European countries come from countries of the former Soviet Union, including Azerbaijan, Georgia, Armenia, Russia, Ukraine, and Moldova.⁷⁴⁰ The situation is the same for Turkey. These women, coming from the same countries, generally enter Turkey through legal channels, but later stay in

⁷³³ Syria, Jordan, Lebanon, Kuwait, Saudi Arabia.

⁷³⁴ Materials for EMCDDA web site about candidate countries, cit. at footnote 713.

⁷³⁵ FATF – Financial Action Task Force on Money Laundering, *Annual Report 1998–1999*, cit., p. 22.

⁷³⁶ Ibidem.

⁷³⁷ U.S. Department of State, *International Narcotics Control Strategy Report 2003*, cit.

⁷³⁸ 'Turkish money launderers have also capitalized on the gold and other precious metal smuggling activities', ibidem.

⁷³⁹ Ibidem.

⁷⁴⁰ U.S. Department of state, *Trafficking in Persons Report*, June 2003, available at: <http://www.state.gov/g/tip/rls/tiprpt/2003/21275.htm> (last verified on 7 April 2004).

the country illegally in violation of visa rules. According to recent sources, Russians, Ukrainians, Georgians, Azerbaijanis and Romanians form the majority of prostitutes in Turkey and the number of minors is estimated to be around 30,000–60,000.⁷⁴¹

The undersecretary of the Turkish Foreign Ministry noted that illegal gangs are trafficking up to 70 people per day into Germany and other western European countries. In the past 4 years, the total number of trafficked people has reached 250,000.⁷⁴²

As a result of the intensified efforts and initiatives targeting illegal migration, international routes for migration flows were diverted away from Turkey in 2002 and 2003. This situation is reflected in the latest national statistics. The number of illegal migrants caught in 2003 was recorded to be 32% lower than in 2002 and 40% lower than in 2001.⁷⁴³ Due to law enforcement efforts, in the last 4 years, more than 4.000 illegal immigrants were arrested.⁷⁴⁴

With regards to **corruption**, recent surveys indicate it is endemic in the political and administrative apparatus.⁷⁴⁵ The sectors more prone to corruption are reported to be the media, government, construction, and health sector. Moreover, 80% of businessmen believe that corruption is the main obstacle preventing foreign investment.⁷⁴⁶

Turkish organised crime is also involved in **counterfeiting, kidnapping, arms smuggling and trade in stolen cars**, the illicit proceeds of which are laundered by investing in legal businesses such as real estate, tourism, the leisure industries and transport companies.⁷⁴⁷

⁷⁴¹ M. Lehti, *Trafficking in women and Children in Europe*, HEUNI Paper n. 18, Helsinki 2003, p. 23–24, available at: <http://www.heuni.fi/uploads/to30c6cjxyah11.pdf> (last verified on 7 April 2004).

⁷⁴² The Protection Project, *Turkey – A Human Rights Report on Trafficking of Persons, Especially Women and Children*, March 2002, available at: <http://209.190.246.239/ver2/cr/Turkey.pdf> (last verified on 7 April 2004).

⁷⁴³ Strategic Centre of Ministry of Interior, *A research on Human Trafficking and Smuggling of Migrants*, 2004, available at: www.icisleri.gov.tr/strateji/arastirma/gocmen.htm (last verified on 7 April 2004).

⁷⁴⁴ Ibidem.

⁷⁴⁵ F. Allum, J. Sands, cit., p. 146.

⁷⁴⁶ Commission of the European Communities, *2003 Regular Report on Turkey's Progress Towards Accession*, p. 22, available at: http://europa.eu.int/comm/enlargement/report_2003/pdf/rr_tk_final.pdf (last verified on 7 April 2004).

⁷⁴⁷ F. Allum, J. Sands, cit., p. 146.

2. LEGISLATION AND PRACTICES

2.1. CRIMINAL LAW

Turkey has ratified all the main international instruments against transnational organised crime including the 2000 United Nations Convention against Transnational Organised Crime and its three protocols, which were ratified in 2003. The Turkish Parliament ratified the Council of Europe Civil Law Convention on Corruption in April 2004 paving the way for Turkey's participation in the Group of States against Corruption (GRECO), which monitors compliance with European anti-corruption standards. Parliament also amended legislation in respect to combating the bribery of foreign public officials in international business transactions with a view to implementing the relevant OECD Convention of which Turkey became a member in 2000. This law makes bribery of a foreign public official a criminal offence under the Turkish Penal Code. The law also renders the laundering of proceeds of bribery a criminal offence under the Turkish penal system.

Participation in a criminal association is criminalized by the Criminal Code (art. 313)⁷⁴⁸ and by Law n. 4422 on Prevention of Benefit-Oriented Criminal Organizations (art. 1). This latter instrument provides a very detailed definition of this crime, which is consistent with international and European standards: *'Those who set up organisations to commit crimes or manage such organisations or act on behalf of such organisations or wilfully and knowingly undertake services, in order to take control of management and administration of an institution, establishment or enterprise directly or indirectly; take control of or gain control or influence over public services, press and publishing institutions; bids, privileges and licensing transactions; establish cartels and trusts concerning financial activities; inflict scarcity or reduction of items or articles; cause price fluctuations; get unfair benefits on behalf of oneself or others; or elicit votes of people in elections or prevent elections from being held, by means of exercising threat, oppression or violence shall be imposed an imprisonment term of three to six years solely for this reason, whilst an imprisonment term of two to four years shall be imposed on offenders who become members of such organisations. If the said organisation is armed, the sentence shall be increased from one-third to half. An organisation is armed, even though no armed action has already been engaged, when the arms and explosives have been prepared or possessed in line with the organisation's aims. If the criminal author is a civil servant or a public person then the sentence shall be increased from half up to one [year]'*.

Money laundering is punished by Law n. 4208 on the Prevention of Money Laundering (art. 7).⁷⁴⁹ This provision does not fully encompass international and

⁷⁴⁸ Art. 313 CC: (1) Those who set up organizations to commit crimes and those who participate in these organizations shall be imprisoned for 1 to two years.

⁷⁴⁹ Art. 7, Law n. 4208: Whosoever commits a money laundering offence shall be punished with a penalty of imprisonment from two to five years and a heavy fine equal to one fold the money laundered and all the property and assets, including the returns derived from, entering into the coverage of dirty money or the corresponding value, in case property and assets could not be seized, shall be liable for confiscation. If dirty money is derived from offences of terrorism or from smuggling of substances or articles which are forbidden by law to be imported to or exported from Turkey, or if the offence is committed to obtain

European standards. The weakest point regards the mental element of the crime, which sets intention as a condition. Therefore Turkey may not provide mutual legal assistance when the intentional element of the money laundering offence is negligence or 'should have known standard'.⁷⁵⁰

The draft anti-money laundering law which would make significant modifications to law number 4208 will help it become fully compatible with the recommendations of FATF.

Drug trafficking is punished by art. 403 CC⁷⁵¹ and mirrors the main provisions of treaties in dealing with this crime.

New articles were included in the Turkish Criminal Code to tackle trafficking in persons. In particular, art. 201a (*Illegal immigration*) criminalizes the conduct of who 'assist people, who are citizens of foreign countries or have no citizenship or do not have permission to stay in Turkey, in their illegal entry into Turkey or in their illegal stay in Turkey and in their (or Turkish citizen) illegal exit from Turkey, in order to directly or indirectly obtain a financial benefit'. The definition of human trafficking is described by art. 201b CC as conduct 'to supply and kidnap people by gaining their approval by applying threats and force in order to force them to work, make them subject to slavery and similar practices or to obtain their organs'. These new articles bring new confiscation penalties for boats, trucks, aircraft and other

sources for the offences of terrorism, the term of imprisonment for the perpetrator according to the clause of the above mentioned paragraph shall not be less than four years.

⁷⁵⁰ See Financial Action Task Force on Money Laundering (FATF), *Annual Report 2002-2003-Annex D*, Paris, 25 June 2003, p. 5, available at http://www.fatf-gafi.org/pdf/AR2003-Annexes_en.pdf (last verified on 18 February 2004).

⁷⁵¹ Art. 403 CC: (1) Whosoever manufactures or imports narcotic drugs or psychotropic substances (hereinafter referred to as 'drugs') without or in breach of license will be sentenced to imprisonment from 10 to 20 years and to a monetary fine of fifty thousand liras for each gram or fraction of the said drug. (2) Whosoever exports the drugs mentioned in sub-article 1 will be sentenced to imprisonment from 6 to 12 years and to a monetary fine of fifty thousand liras for each gram or fraction of the drug involved. (3) Whosoever exports drugs after having manufactured or imported them will, in addition, be sentenced to the penalties specified in sub-article 1. (4) The imprisonment term served in a third country for drugs exported from Turkey or pronounced but not served in a third country, will be deducted from the sentence pronounced for the export violation if the crime is likewise punishable in Turkey. (5) Whosoever sells, offers for sale, purchases or retains drugs or gives them to others without remuneration or receives them in the same manner, transports, intermediates for the sale, purchase or acquisition thereof in any matter whatsoever without or in breach of license will be sentenced to imprisonment from 4 to 10 years and to monetary fine of fifty thousand liras for each gram or fraction of the drugs involved. (6) Where the drugs involved in the preceding sub-articles are heroin, cocaine, base morphine or morphine the sentence will be augmented by half. (7) Sentences to be pronounced on persons who establish, manage or participate in organizations to commit the crimes specified in the previous sub-articles will further be increased by half. (8) Where the crimes mentioned in this Article are committed by two or more persons without the explicit or implicit agreement of those who are engaged in these criminal acts in a professional, trade or habitual manner, the sentence will be increased by a third. (9) Sentences to be pronounced on persons who employ for the crimes enumerated in this Article minors under eighteen years of age or those not having criminal liability will be increased by a sixth. (10) Whosoever establishes or manages organizations to commit the above crimes or participates in such organizations will be punished by imprisonment from five to 10 years. (11) Any association of two or more persons for the purpose of committing the said crimes will be deemed as an organization in this context. (12) Whoever purchases drugs with false prescriptions will be sentenced to imprisonment from one to three years and to monetary fine of up to five million liras.

vehicles when they are used for illegal immigration and human trafficking. They also envisage imprisonment from 2 to 5 years for illegal immigration.

If the above mentioned crimes, smuggling of migrants and trafficking of human-beings, are committed as an organised crime, the punishments shall increased.

Finally, in bribery and money laundering offences, corporations have criminal and administrative liability. However this liability is not extended to the other activities typically linked to organised crime.

2.2. CRIMINAL PROCEDURE

The Turkish criminal procedure framework for investigating drug cases provides an extensive range of special means, specifically: interceptions of telephone conversations, fax and Internet transmissions, audio or video recording of events taking place on private premises, undercover operations, the use of storefronts by investigative units and covert methods such as controlled delivery. The first five techniques must be authorised by an order from a judge and are used in accordance with Law No. 4422 on the Prevention of Benefit-Oriented Criminal Organizations. The results of interceptions may be used as evidence in criminal trials provided that they are collected in accordance with the law.

The use of storefronts by investigative units can be authorised by the competent police department and is regulated in the Regulations of Anti- Smuggling and Organized Crime Department on Establishment, Tasks and Responsibilities of this unit.

Besides drug smuggling crimes, all these measures can be applied to the other forms of organized crime that are mentioned in Law n. 4422, i.e. benefit-oriented organized crime, terrorist activities, the smuggling of historical works of art, firearms and ammunition offences committed by two or more persons collectively. But these special techniques are only used as a last resort and there is no possibility of identifying the suspects nor obtaining evidence through other methods.

Although, there are various articles in some laws aimed at combating corruption, a new separate law has been prepared to increase the effectiveness of this effort and has been submitted to Parliament.

Witness protection in Turkey is regulated by the Law of Criminal Procedure, the 'Law Applied for Some Criminals', the Anti-Terror Law, the Law on the Prevention of Benefit-Oriented Criminal Organizations, the regulations concerning the implementation of this Law and the Regulation on Protection Services. Law enforcement units can now also apply the protective measures provided for in art. 20 of the Anti-Terror Law to the witnesses of benefit-oriented crimes and of those crimes committed collectively. These are the smuggling of drugs, arms and ammunition and historical works in accordance with Law No. 4422 on the Prevention of Benefit-Oriented Criminal Organizations dated 1999. A first witness protection program has been established in accordance with the Anti-Terror Law. The responsible authority for the protection of witnesses is the Ministry of Interior. A specific 'Protection Unit', established in 2003 by the Turkish National Police,

performs all the procedures to implement the measures for the protection of witnesses in strict privacy.

The draft criminal Procedures Law that is now in front of the legislative assembly envisages the implementation of the witness protection measures for all crimes.

Although, the relocation of witnesses through cooperation with other countries is not regulated in a separate article by Turkish domestic legislation, it is possible to use this protection method within the framework of relevant international conventions. As yet Turkey does not have a regional or international program of witness relocation. However, it is a party of the United Nations Convention against Transnational Organised Crime, which includes some provisions which address the issue of witness protection.

The seizure of property and proceeds gained through criminal activities is regulated by the Criminal Procedure Code (art. 86), Law n. 4208 on the Prevention of Money Laundering (art. 9) and Law n. 4422 on the Prevention of Benefit-Oriented Criminal Organizations (art. 6). Both property confiscation and value confiscation are admitted. Criminal conviction is necessary in order to confiscate and the 'reversal of burden of proof' does not apply.

2.3. DATA PROTECTION RULES

Turkey has signed the COE Convention for the Protection of Individuals with regards to the Automatic Processing of Personal Data, even if the ratification process is not finished yet. The bilateral security agreements between Turkey and Germany, Italy and Hungary include specific provisions for personal data protection. Likewise, the security agreements signed between Turkey and Bulgaria, Bosnia and Herzegovina, Moldova and Romania do not allow the parties to give the information to a third party without the consent of the country that provides the information. Moreover, within the scope of every bilateral agreement the information that is subject to the exchange cannot be used other than for the stated purpose. No agreement has yet been concluded with Europol and this lack of regulation does not allow an exchange of data with this organisation.

Besides this international framework, Turkey is preparing a separate law, which covers all the aspects of the protection of personal data. At the moment, there are constitutional guarantees, which underlie the protection of fundamental freedoms of the individual concerning the protection of personal data (art. 20 of the Constitution of 2001). With specific regard to police and prosecutor activities, under Turkish Law on the Prevention of Benefit-Oriented Criminal Organizations, number 4422, the disclosure and misuse of the personal data gathered during the investigation of organized criminal groups is prohibited and may be punished by imprisonment from two to three years. Exceptions to data protection rules may apply on the grounds of national security, public order or investigative secrecy. Law enforcement agencies and prosecution offices are bound to apply security measures of various types: preventive measures (marking documents containing personal data as 'confidential'), physical measures (equipment protection: installation conditions, special access conditions, power control and environmental conditions), and technological measures (anti-virus protection, software control, secured access, definition of users of the computers and passwords to access the

information). The head of the relevant office and individual judges/prosecutors are ultimately responsible for the application of data protection provisions.

Despite these efforts, there appears to be at least two weaknesses in the framework of data protection:

- no independent supervisory authority has yet been appointed to control the enactment of data protection rules;
- transborder flows of personal data occur without any form of national regulation.

In order to meet the standards set out in the COE instruments, Turkey should address these issues in forthcoming laws on personal data protection.

However, the new changes made to the Constitution in 2001, has brought about further developments in terms of fundamental freedoms and rights. Moreover, the new formulation in the criminal procedures such as search, arrest, legal assistance, evidence prohibitions in Turkish legislation, gives more freedom and rights to individuals than the legislation of many other European countries. According to existing criminal procedures, even when there is urgency, without the written consent of a judge or a competent authority, the search and seizure of evidence found on an individual or in a residence can not be carried out.

2.4. MULTILATERAL AND BILATERAL AGREEMENTS

a) Legislation

A variety of sources regulate the way in which Turkey provides and receives assistance in pre-trial investigations into transnational organised cases led by police officers and by prosecutors/investigating judges: international and European conventions, multilateral and bilateral agreement and national law. Turkey has signed and ratified most of the international and European instruments for judicial and police cooperation, with the exception of the Additional Protocol to the European Convention on Extradition (1975 COE - ETS 086).

Turkey has also recently ratified the United Nations Convention against Transnational Organised Crime (2000) and Turkish prosecutors can therefore exploit its international cooperation provisions and also those of the 1988 United Nations Convention (ratified in 1995). The same cannot be said about a European instrument, which has important provisions concerning international cooperation, namely: the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime. However, this instrument was signed in 2001 and the process of ratification is underway. Another important instrument, namely Criminal Law Convention on Corruption, was ratified in early 2004.

Turkey has also entered into bilateral and multilateral agreements regulating international judicial assistance with many countries: Albania (1995), Bulgaria (1975), BiH (1973), FYRoM (1997), the USA (1979), Australia (1994), Azerbaijan (1992), China (1992), Georgia (1996), Syria (1981), Jordan (1971), Pakistan (1983), Uzbekistan (1994), Kazakhstan (1995), Hungary (1986), Moldova (1996), Romania (1991), Slovenia (1973). Turkey also cooperates with most EU countries within the international and European legal framework of judicial cooperation.

b) Practices

Turkish judicial authorities cooperate with most of their neighbouring countries on the basis of COE conventions. This type of cooperation is in place with Greece, Bulgaria, Georgia, Azerbaijan. There is no real need to have a bilateral agreement with these countries as their criminal systems are similar to Turkey's and they are all COE members. On the other hand, cooperation with Iran, Iraq and Syria is more difficult because they have different criminal justice systems.

2.5. ASSISTANCE THROUGH DIRECT CONTACT

a) Legislation

Turkey has signed many formal agreements for direct police cooperation with all SEE and EU countries, with the sole exceptions of Serbia and Montenegro, Luxembourg, Portugal and Switzerland. Turkish police officers, when directly contacted by police officers of another country, are obliged by law to forward requests for assistance over which they have no jurisdiction to competent colleagues. Moreover, when Turkish police gather information on a transnational organised crime ring that could be useful to develop an investigation in another country, they are obliged by law to forward that information to the authorities of the other country. However, this obligation is only valid for the countries with which there is a bilateral or multilateral agreement with this kind of commitment. In accordance with national law and security cooperation agreements, Turkish police can send copies of phone records, documents related to vehicle ownership, documents related to criminal records and personal identity information. They cannot send bank records, however judicial authorities are entitled to investigate and carry out such requests in accordance with national and international legislation. According to the Turkish legal system, international agreements are equivalent to its national laws.

Finally, when foreign police officers start a shadowing operation in their own country, they cannot be authorised to continue it within the borders of Turkey, only Turkish police can continue the operation, and in accordance with mutual understandings between the counterparts, the foreign officers can only participate as observers.

b) Practices

Turkish police officers are informed of the possibilities of being able to cooperate with police in other countries through the above-mentioned agreements. They also enter into direct contact, whether an agreement for direct cooperation exists or not, with the countries in which a Turkish liaison officer is stationed or those that are part of the International Urgent Intervention System. These countries are: Jordan, Greece, Brazil, USA, Germany, Albania, Austria, Denmark, the UK, Italy, Spain, France, The Netherlands, Israel, Belgium, Romania and Saudi Arabia. One of the exemplary results of this cooperation is controlled deliveries and joint operations. These are some of the countries with which Turkey has conducted these kinds of joint operations: the USA, Germany, Romania, Italy, the UK, Greece, the Russian Federation, Macedonia, Canada, Bulgaria, The Netherlands, Spain and Jordan.

Other channels for direct police cooperation available to Turkish police officers are:

- liaison officers (stationed in Romania, Austria, France, and Italy), who assist by providing direct links with foreign authorities, exchanging information and statistics and by carrying out individual core work;
- joint investigative teams with Albania, Bulgaria, Bosnia and Herzegovina, Croatia, FYRoM, Hungary, Moldova, Romania, Slovenia, Belgium, Germany, Greece, Italy, The Netherlands, Spain and the United Kingdom;
- international joint customs surveillance operations with all EU and SEE countries.

All these practices of cooperation are considered effective, because they provide open communication channels and tangible cooperation between the counterparts. Liaison officers and international joint customs surveillance operations were rated as 'highly useful', while joint investigation teams were rated 'of medium usefulness'.

Turkish police officers are deemed to have a medium-high level of training in investigating transnational organised crime and joint seminars and specialisation courses are organized with the purpose of training on the basis of the experience of colleagues from different countries. The Turkish National Police, with the contribution of universities, conducts a seminars and conferences at both national and international levels, on judicial issues such as organized crime and human rights with the participation of police forces, prosecutors, judges, lawyers and graduates.⁷⁵²

As to computer equipment, Turkish police officers have a computer network (intranet) and, if needed, an official e-mail account is available in their offices.

2.6. ASSISTANCE THROUGH INTERNATIONAL AND REGIONAL ORGANISATIONS

a) Legislation

Interpol is not the only instrument used by Turkish police officers to identify their competent counterparts in foreign countries, because, as mentioned above, this is done in many other ways (cooperation talks held with countries party to security agreements, relevant activities carried out with international and regional organisations, liaison officers). Furthermore, the Turkish Interpol National Bureau

⁷⁵² An important training initiative is the 'Turkish International Academy Against Drugs and Organized Crime' (TADOC), which was established in Ankara on 26 June 2000 under the leadership of the United Nations and within the framework of Turkey-UNDCP collaboration to provide training in the field of combating drug and organized crimes. TADOC is also the National Focal Point for the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) Training is given to the law enforcement units of the countries in the Economic Cooperation Organization, Black Sea Economic Cooperation and the Balkan countries and countries that were parties to the mutual cooperation agreements signed with Turkey in the fields of combat against illegal production, usage, smuggling of drugs and organized crime, at the Academy. So far TADOC has provided training to the number of officials shown below: 3001 personnel (national basic training program), 853 personnel (national advanced training program), 358 personnel from 37 different countries (international advanced training program). See the information sheet provided by the Ministry of Interior-Turkish National Police-Department for Anti-smuggling and Organised Crime and entitled *The Approach of Turkish Police in the Struggle Against Transnational Organized Crimes*, unpublished, available at Transcrime.

provides the police of other countries the following acts of cooperation, when requested:

- information regarding investigations on crimes committed in Turkey;
- information on investigations aimed at tracing goods located in Turkey, which are related to a crime committed abroad;
- information regarding criminal records;
- information related to the ownership of vehicles and driving licenses issued in Turkey;
- information regarding the ownership of phone numbers.

On 18 May 2004 a cooperation agreement was signed between Turkish Police and Europol. This agreement was ratified by the Turkish Cabinet on 5 July 2004 and came into effect on 15 July 2004. It enables the parties to exchange strategic and technical information with the purpose of identifying, controlling and preventing transnational organized crimes. However, this data exchange does not include operational information yet, because Turkey has not ratified the COE Convention for the Protection of Individuals with regards to the Automatic Processing of Personal Data.

b) Practices

Given the fact that the full cooperation is not in place with Europol yet, only the level of cooperation with Interpol could be assessed. There is a medium frequency of use of Interpol records and its communication system. The following table illustrates the level of cooperation (where 0=no cooperation, 1=low level of cooperation, 2=medium level of cooperation and 3=high level of cooperation) in the different areas in which they operate. This evaluation is based on the personal judgement of the experts interviewed.

TABLE 27. DEGREE OF COOPERATION BETWEEN TURKEY AND INTERPOL

Exchange of strategic and operational information	3
Exchange of financial information on suspected corporate entities	3
Provision of direct contacts with local law enforcement authorities	2
Provision of direct contacts with local prosecution offices	2
Exchange of information on investigative procedures and crime prevention methods	3
Training initiatives	2
Advice and support in individual investigations	3
Exchange of liaison officers	2
Participation in joint investigative teams in a support capacity	0
Participation in joint investigative teams in an operative capacity	0

3. GOOD PRACTICES

3.1. STRUCTURES SET UP WITH INTERNATIONAL COOPERATION PURPOSES

Police officers, prosecutors and courts normally have to channel their requests for assistance through a national centralised authority (the Ministry of Interior and the Ministry of Justice).

The Turkish Police effectively use the communication system provided by the National Interpol Bureau. Besides this, it can contact and exchange data with other countries through liaison officers and the International Urgent Intervention System. Communications with other countries for the operational needs targeting transnational organized crimes is mainly carried out through a specialised unit, the Anti-Smuggling and Organised Crime Department of Turkish National Police, which is the authority responsible for combating organised crime. Other law enforcement units working under the Ministry of Interior are: the General Command of Gendarmerie (which has a military structure and operates in rural areas), and the Coastguard Command responsible in the territorial waters.

Communications are mainly conducted in English and the competent officers know English at a sufficient level. There is no standardized form for the communications.

3.2. DATABASES ON ORGANISED CRIME

Turkey is one of the few countries considered in this study to have enacted a common criminal database to exchange data on OC with other countries. From the point of view of operational police cooperation the 'International Urgent Intervention System' is a practice of cooperation that has shown good results in terms of rapidity and security in the exchange of data. It is based on a computerised communication network and has been actively operating between the police of Turkey and Bulgaria, Georgia, Albania, Azerbaijan, Ukraine, Romania and Jordan. Using this centralised system, sounds, photograph, fingerprints and statement document files can be exchanged in a rapid and secure fashion.

Besides the International Urgent Intervention System, in Turkey there are two databases containing information about persons wanted/convicted for all types of crime, including participation in organised criminal groups. To access these databases, a foreign officer must first submit his request in a written form. It is thus not possible to access this database directly. The information exchange is carried out within the scope of security cooperation or through judicial rogatory.

3.3. *MODI OPERANDI*/METHODS IN THE INTERNATIONAL COOPERATION PROCESS

The following are the *modi operandi*/methods enacted in Turkey in order to enhance the cooperation process:

- acknowledgement of all requests and written enquiries concerning the execution of requests;

- providing the requesting authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing the request;
- giving priority to requests which have clearly been marked 'urgent` by the requesting authority;
- giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authority how the difficulty might be overcome;
- explaining when the assistance requested is likely to be provided;
- explaining the reasons for the urgency or deadline;
- ensuring that requests are submitted in compliance with the relevant treaty or other international arrangements;
- providing the requested authorities with the name and contact details, including telephone and fax numbers, of the authority and, if possible, the person responsible for issuing the request;
- compliance with the formalities and procedures expressly indicated by the requesting member state;
- direct sending of procedural documents;
- spontaneous exchange of information;
- joint operational meetings;
- interagency coordination protocols.

4. EMERGING OBSTACLES

The analysis of legislation, practices and good practices relevant for international cooperation against organized crime has highlighted some shortcomings that are reported here for the sake of clarity, as they represent the background and rationale for the recommendations included in paragraph 5.

4.1. OBSTACLES IN LEGISLATION

1. The high standard of proof for the mental element of the money laundering offence

The threshold for the mental element of money laundering in Turkey is intention. Therefore Turkey may not provide mutual legal assistance when the intentional element of the money laundering offence is negligence or 'should have known' standard.

2. The limited scope of liability of legal persons

In bribery and money laundering offences, corporations have criminal and administrative liability. However this liability is not extended to the other activities typically linked to organised crime.

3. The gaps in the confiscation regime

The Turkish confiscation regime is spread out in different sources (CCP, Law 4208 on the Prevention of Money Laundering and Law n. 4422 on Prevention of Benefit-oriented Criminal Organisations). However a criminal conviction is necessary in order to confiscate and the 'reversal of burden' rule does not apply.

4. The inadequacy of data protection rules and agreements

Turkey has not yet ratified the 1981 COE Convention (signed in 1981) regarding data protection provisions. Furthermore, it has not concluded agreements with Europol within the framework of police and judicial cooperation containing provisions to protect personal data and this impedes the exchange of operational information. Finally no supervisory authority exists to deal with personal data protection.

The absence of such legal instruments obstructs police and judicial cooperation with the countries that have enacted a data protection regime and are party to the 1981 COE Convention.

5. The lack of ratification of the first additional Protocol to the European Convention on Extradition

Turkey has not yet ratified the first additional Protocol to the European Convention on Extradition (1975 COE - ETS 024), which provides for a restriction of the application of the political offence clause.

6. The absence of bilateral agreements on police and judicial cooperation with all the neighbouring countries

Even though Turkish judicial authorities cooperate with most of their neighbouring countries on the basis of COE conventions, cooperation with some countries (e.g. Iran, Iraq and Syria) is more difficult because they have different criminal justice systems and are not part of the COE. In these cases the lack of bilateral instruments might impair the cooperation process at a practical level, because through the deployment of solely multilateral instruments, it is not possible to reach the level of definition and detail achieved by bilateral agreements.

7. The gaps in direct police cooperation

Turkish police officers cannot directly send bank records, even if requested to do so by a foreign colleague.

8. The lack of agreements for cooperation with Eurojust or the European Judicial Network.

Turkey has not yet concluded any agreement for cooperation with Eurojust or the European Judicial Network.

4.2. OBSTACLES IN PRACTICES

9. The necessity of training activities focussed on new forms crime

The level of training for police officers in investigating TOC cases is rated as good. However, training activities are not sufficiently focussed on new forms of crime or crimes which evolve very quickly.

4.3. OBSTACLES IN GOOD PRACTICES

10. The lengthiness of assistance procedures through central authorities

It takes from one to two months to get an answer to an assistance request made through central authorities. The lengthiness of the procedure is a deficiency that greatly impairs law enforcement and prosecution office activities, which often need a prompt input to conduct effective investigations.

4.4. OTHER OBSTACLES MENTIONED BY THE EXPERTS

11. Obstacles to investigating organised crime

The experts interviewed mentioned the following as the most significant obstacles to investigating organised criminal groups:

- lack of legislation (in particular, special investigative techniques are not applied to all forms of organised crime yet);
- high turnover of specialised personnel participating in organised crime investigations.

12. Obstacles to police assistance

The experts interviewed mentioned the following as the most significant obstacles to *police assistance* received by Turkey from other countries in pre-trial investigations into transnational organised crime:

- lack of response to requests for assistance;
- delay of response to requests for assistance;
- difficulty in identifying the foreign competent counterpart;
- language problems;
- lack of financial resources;
- high turnover of personnel in the police forces;
- unwillingness to exchange all necessary information with foreign counterparts.

5. RECOMMENDATIONS

5.1. RECOMMENDATIONS ON LEGISLATION

Recommendation n. 1

'Improving the money laundering regime'

Background and rationale

The threshold for the mental element of money laundering in Turkey is intention. Therefore Turkey may not provide mutual legal assistance when the intentional element of the money laundering offence is negligence or 'should have known' standard.

Recommendation

Action should be taken to expand the criminal definition of money laundering and bring it up to COE and internationally recognised standards.

Implementing measures

Law n. 4208 on the Prevention of Money Laundering should be amended in order to bring the threshold of mental element down to the negligence or 'should have known' standard.

Recommendation n. 2

'Expanding liability of legal persons'

Background and rationale

In bribery and money laundering offences, corporations have criminal and administrative liability. However this liability is not extended to the other activities typically linked to organised crime.

Recommendation

Action should be taken to expand the scope of liability of legal persons beyond bribery and money laundering offences.

Implementing measures

- Turkish legislators should include in the criminal code or in the special legislation against organised crime (e.g. Law n. 4422 on Prevention of Benefit-oriented Criminal Organisations) provisions on liability of legal persons engaging in organised crime activities.
- Alternatively, a form of administrative liability for legal persons should be sought in order to make legal persons accountable for their participation in organised crime activities.

Recommendation n. 3

'Improving the confiscation regime'

Background and rationale

The Turkish confiscation regime is spread out in different sources (CCP, Law 4208 on the Prevention of Money Laundering and Law n. 4422 on Prevention of Benefit-oriented Criminal Organisations). However a criminal conviction is necessary in order to confiscate and the 'reversal of burden' rule does not apply.

Recommendation

Action should be taken to improve the confiscation regime in order to make it more consistent with international standards.

Implementing measures

Turkish legislators should enact provisions making confiscation available from the early stages of the proceedings and ease the burden of proof of the prosecutors.

Recommendation n. 4

'Ratifying the 1981 COE Convention and improving relationships with Europol'

Background and rationale

Turkey has not yet ratified the 1981 COE Convention (signed in 1981) relative to data protection provisions. Furthermore, it has not concluded agreements with Europol within the framework of police and judicial cooperation containing provisions to protect personal data. Finally no supervisory authority exists to deal with personal data protection.

The absence of such legal instruments obstructs police and judicial cooperation with the countries that have enacted a data protection regime and are party to the 1981 COE Convention.

Recommendation

Action should be taken to ratify the 1981 COE Convention, reach an agreement with Europol and establish a supervisory authority.

Implementing measures

The Turkish Parliament should ratify the 1981 COE Convention and the Turkish government should conclude an agreement with Europol on this issue.

Recommendation n. 5

'Ratifying the 1975 COE protocol on extradition'

Background and rationale

Turkey has not yet ratified the first additional Protocol to the European Convention on Extradition (1975 COE – ETS 024), which provides for a restriction of the application of the political offence clause.

Recommendation

Action should be taken to ratify the first additional Protocol to the European Convention on Extradition (1975 COE – ETS 024).

Implementing measures

The Turkish Parliament should complete the ratification of the first additional Protocol to the European Convention on Extradition (1975 COE – ETS 024).

Recommendation n. 6

'Concluding bilateral agreements on police and judicial cooperation with all the neighbouring countries'

Background and rationale

Although Turkish judicial authorities cooperate with most of their neighbouring countries on the basis of COE conventions, cooperation with some countries (e.g. Iran, Iraq and Syria) is more difficult because they have different criminal justice systems and are not part of the COE. In these cases the lack of bilateral instruments might impair the cooperation process at a practical level, because through the deployment of solely multilateral instruments, it is not possible to reach the level of definition and detail achieved by bilateral agreements.

Recommendation

Action should be taken to conclude bilateral agreements on judicial cooperation with all neighbouring countries.

Implementing measures

Turkish government might consider to reach consensus on the conclusion of bilateral agreements on judicial cooperation with all neighbouring countries.

Recommendation n. 7

'Expanding legal possibilities to directly exchange data'

Background and rationale

Turkish police officers cannot directly send bank records, even if requested to do so by a foreign colleague.

Recommendation

Action should be taken to expand the legal possibilities to directly exchange bank records.

Implementing measures

Legislation should be enacted allowing police officers to directly exchange of bank records in the respect of data protection regulations.

Recommendation n. 8

'Promoting cooperation with international and regional organisations'

Background and rationale

Turkey has not yet concluded any agreements for cooperation with Eurojust or the European Judicial Network.

Recommendation

Action should be taken to promote cooperation with Eurojust and the European Judicial Network.

Implementing measures

An agreement should be reached with Eurojust in order to establish a Turkish liaison magistrate in this institution. More magistrates should be part of the EJM.

5.2. RECOMMENDATIONS ON PRACTICES

Recommendation n. 9

'Improving the level of training for police officers in investigating TOC cases'

Background and rationale

The level of training for police officers in investigating TOC cases is rated as good. However, training activities are not sufficiently focussed on new forms of crime or crimes which evolve very quickly.

Recommendation

Action should be taken to provide training which focuses more on new forms of crime or crimes which evolve very quickly.

Implementing measures

- Training courses and seminars should be organised on the new forms of crime or crimes which evolve very quickly.
- Increase the participation of experts from other relevant organisations in the investigations conducted by the police.

5.3. RECOMMENDATIONS ON GOOD PRACTICES

Recommendation n. 10

'Speeding up cooperation through central authorities'

Background and rationale

It takes from one to two months to get an answer to an assistance request made through central authorities. The lengthiness of the procedure is a deficiency that greatly impairs law enforcement and prosecution offices activities, which often need a prompt input to conduct effective investigations.

Recommendation

Action should be taken to speed up the request for assistance procedures through central authorities

Implementing measures

Prosecutors and police officers involved in TOC cases should also try to use direct channels of cooperation. The use of these alternative routes may relieve central authorities of a certain amount of work, thus speeding up the cooperation process.

9.

COMPARATIVE ANALYSIS

This section provides a comparative analysis of the results collected in the various country profiles using graphs and synoptic tables, which provide an immediate picture of the findings concerning the following:

- 1) the *organised crime situation*, with particular reference to the main features and the activities of the organised criminal groups;
- 2) the level of discrepancy between the national *legislation* on international police and judicial cooperation against organized crime of each SEE country and the international and European legal standards;
- 3) the level of enforcement of the above legislation in the *practices* related to international police and judicial cooperation against organized crime;
- 4) the level of discrepancy between national *good practices* and the international and European standards on good practices dealing with international police and judicial cooperation against organized crime.

The first element is dealt with in paragraph 9.1. This is divided into two subparagraphs corresponding to the two areas of analysis in which the organised crime analysis has been carried out: features (§. 9.1.1) and activities (§. 9.1.2) of the organised criminal groups.

The second element is dealt with in paragraph 9.2. This is divided into six subparagraphs corresponding to the six areas of analysis of both the legislation that is *indirectly* relevant for international and judicial cooperation against organized crime (§§. 9.2.1, 9.2.2, 9.2.3) and the legislation *directly* relevant for international and judicial cooperation against organized crime (§§. 9.2.4, 9.2.5, 9.2.6).

The third element is dealt with in paragraph 9.3. This is divided into three subparagraphs corresponding to the three areas of analysis of practices relative to the enforcement of the legislative provisions directly relevant for international cooperation (§§. 9.3.1, 9.3.2, 9.3.3).

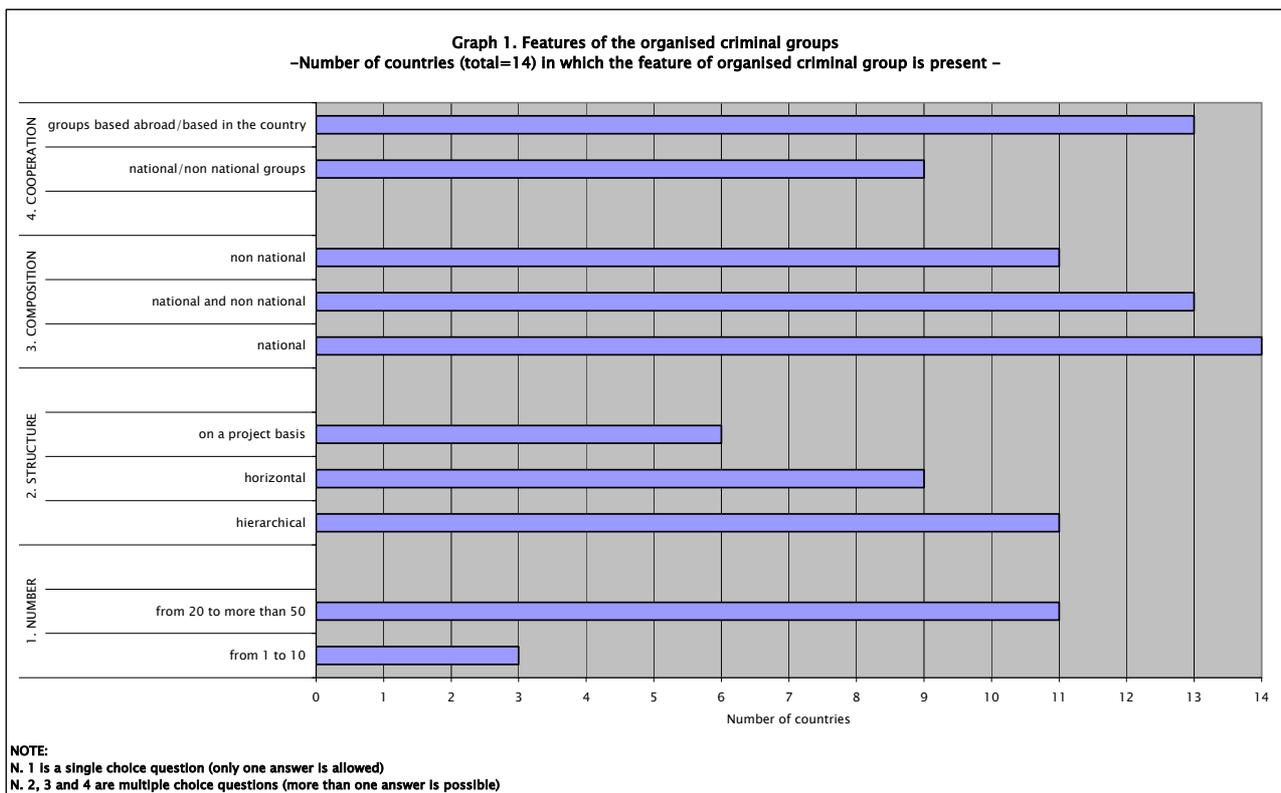
The fourth element is dealt with in paragraph 9.4. This is divided into three subparagraphs corresponding to the three areas of analysis of good practices dealing with international police and judicial cooperation against organised crime (§§. 9.4.1, 9.4.2, 9.4.3).

Graphs and synoptic tables are provided at the beginning and at the end of each of the area of analysis considered and discussed. This choice provides the reader with a general overview of the results at a regional level and finally all the details (country-by-country) of the comparative analysis.

9.1. THE ORGANISED CRIME SITUATION

9.1.1. FEATURES OF THE ORGANISED CRIMINAL GROUPS

Graph 1 provides a picture of the number of OC groups present in the SEE countries, their structure, their cooperation mechanisms and their composition. The detailed results per country are presented in Synoptic Table 1 at the end of paragraph 9.1.



Finding 1. OC groups are widespread in the SEE countries

In the vast majority of the countries considered there are between 20 and more than 50 OC groups operating, each with a number of members that ranges from less than 10 to 30 persons. OC is thus widespread in almost all the countries considered.

Finding 2. Not only mafia-type groups...the emergence of a ‘network paradigm’

These groups have very diversified structures. There are not only hierarchical (‘mafia-type’) groups are present (in 11 countries), but there are also horizontal (in 9 countries) and ‘project based’ (in 6 countries) groups. By ‘horizontal’ we mean OC groups without a strong vertical or pyramid organization, without a strict allocation of duties and with a more flexible attitude toward the carrying out of OC activities. Even more flexible are the OC groups which meet ‘on a project based’ basis (loosely

knit networks of individuals occasionally brought together to carry out of one or more criminal activities).

This finding confirms recent criminological theories (Clerks, 2003), which dispute the validity of the traditional representation of OC as a close knit, hierarchical, pyramidal organisation and suggests that the phenomenon is far more complex and characterised by social networks connected by intermediaries, which are flexible and quickly adapt to illicit markets.

Confirmation of the 'network paradigm' also comes from the fourth group of variables considered in the analysis of OC groups in the SEE countries. In 13 SEE countries groups based in one country cooperate with groups based in another country. Furthermore in 9 SEE countries groups composed of nationals cooperate with groups composed of non nationals to carry out their criminal activities.

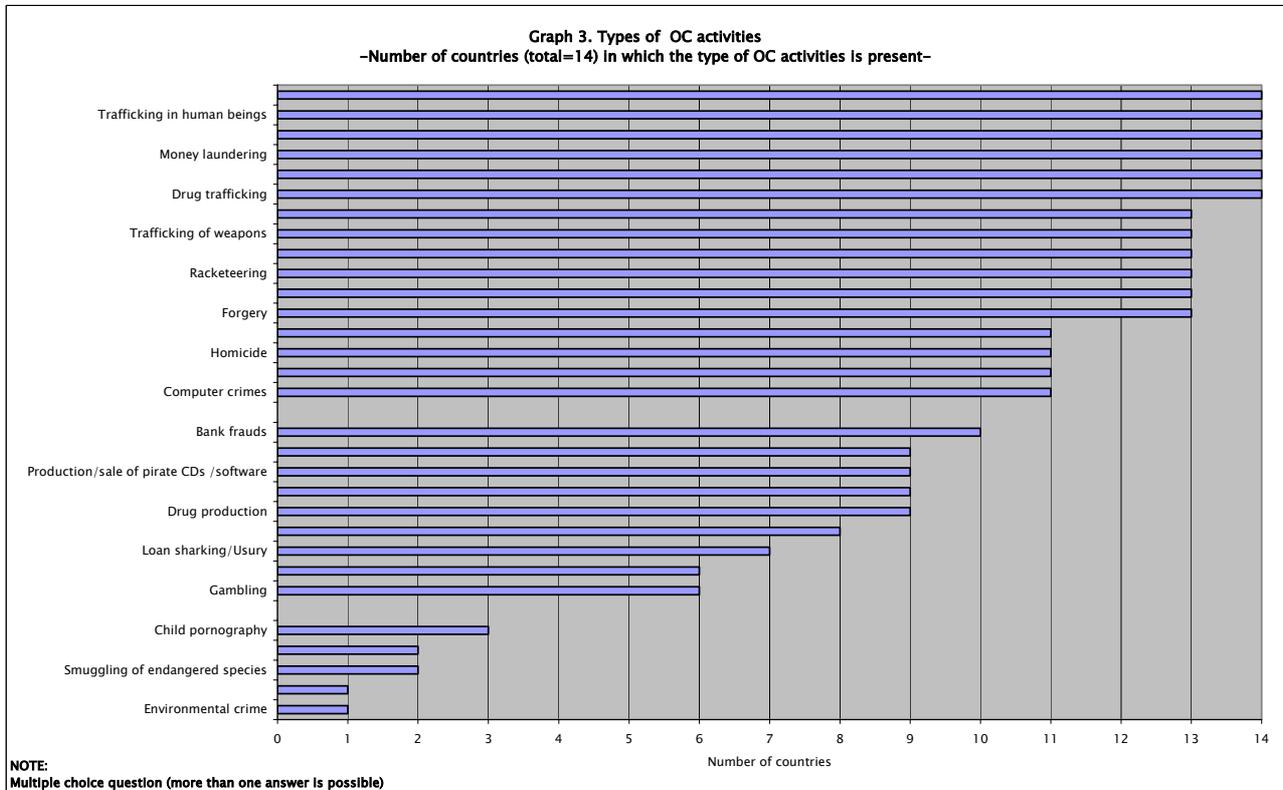
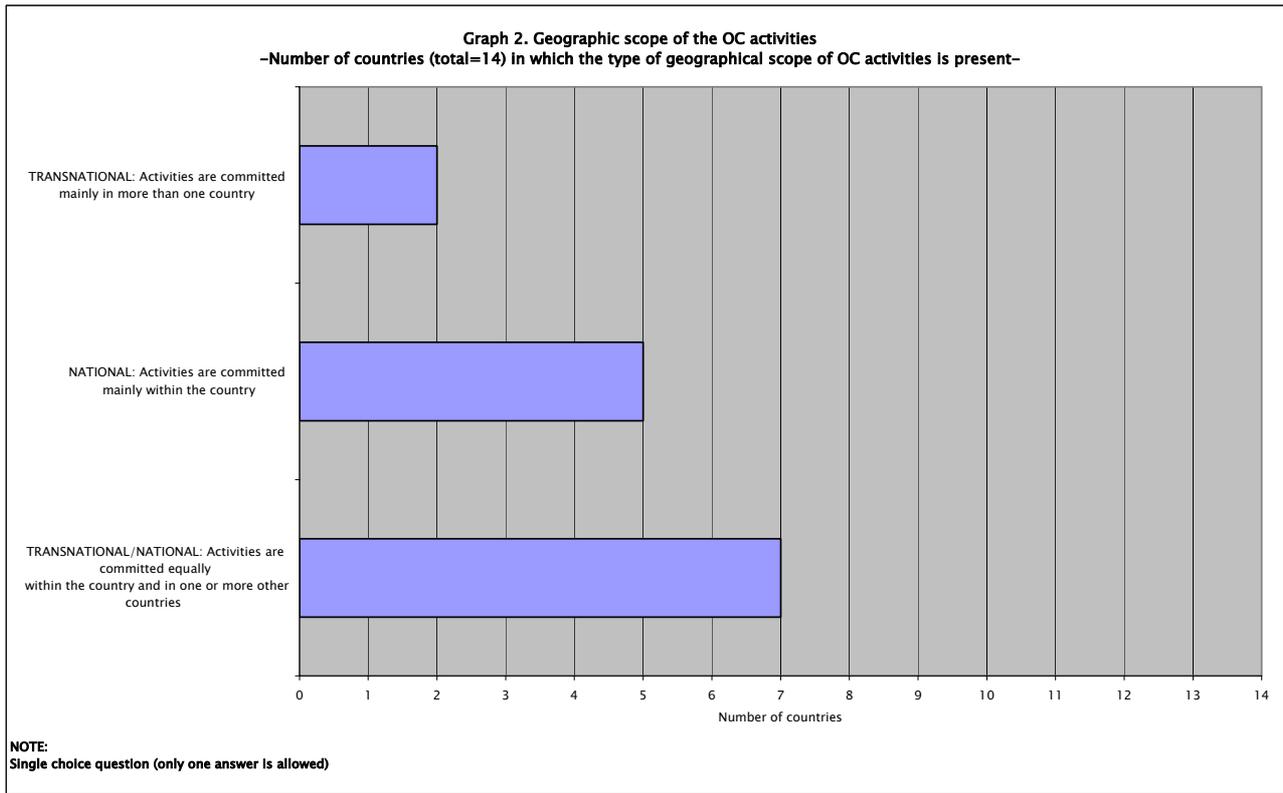
*Finding 3. OC goes 'G-LOCAL' 1*⁷⁵³

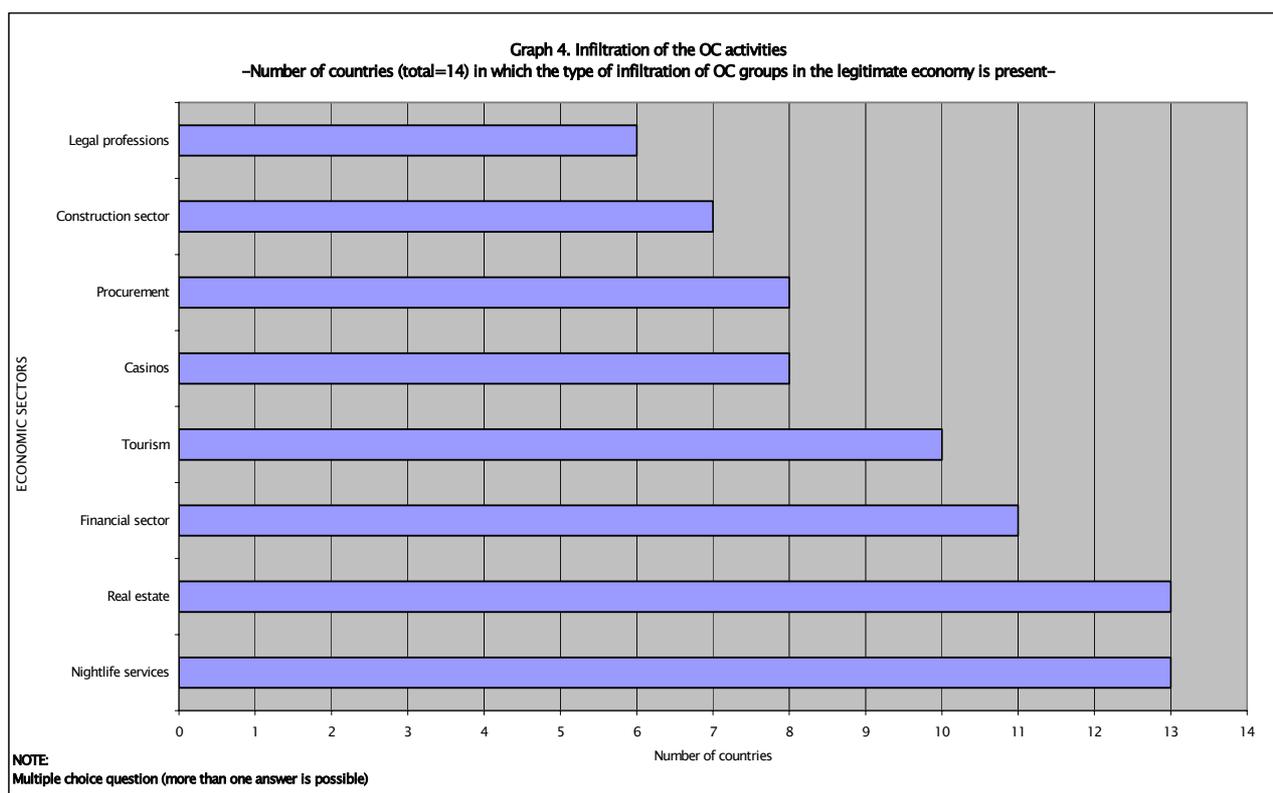
By looking at the composition of OC groups, it appears that in almost all the SEE countries (13 countries) there are groups composed of nationals and non nationals. This is an element, which suggests that OC has assumed a transnational dimension. Other variables confirm this characteristic, while also indicating that OC is deeply entrenched in the economic and political structure of the States (see *infra* Graph 2, 3 and 4).

9.1.2. ACTIVITIES OF THE ORGANISED CRIMINAL GROUPS

Graphs 2, 3 and 4 provide a picture of the geographic scope, the types of activities committed by the OC groups and their infiltration into the legitimate economic sectors of the SEE countries. The detailed results per country are presented in Synoptic table 1 at the end of paragraph 9.1.

⁷⁵³ Criminologists now use the term 'g-local' to indicate that OC is both a local reality deeply entrenched in the structure/culture of a State, and a globalised/transnational reality, that like modern enterprises develop contacts with foreign states to develop its activities and exploit new opportunities. See D. Hobbs, 'Going Down the Glocal: The Local Context of Organised Crime', in *The Howard Journal of Criminal Justice*, Volume 37: Issue 4, 1998, p. 407-422.





Finding 4. OC goes 'G-LOCAL' 2

As noted in the previous discussion of OC features, it emerges that OC groups have both a local and transnational dimension, not only with regard to their composition and *modus operandi*, but also with regard to the activities they carry out.

This is illustrated by Graph 2, which indicates that in the majority of the SEE countries OC activities are committed with both a transnational and national scope (9 countries), or with a distinct transnational scope (2 countries).

Furthermore, by looking at the types of activities carried out in the SEE countries (Graph 3), it can be seen that among the activities committed in most countries there are both those characterised by a clear transnational nature (i.e. drug trafficking, trafficking in human beings, etc.) and those that are deeply entrenched in the country (i.e. racketeering, homicides, armed robbery).

Finding 5. OC groups infiltrate into legitimate economy

Besides confirming Finding 4, Graph 4 shows that OC groups infiltrate into important economic sectors, thus rooting their presence in SEE economic structures. This also suggests that in order to gain access to these sectors, they would need to constitute legal persons as shields for their activities.

SYNOPTIC TABLE 1 . ORGANISED CRIME SITUATION

AREA 1. Features of the organised criminal groups														
	ALB	BIH	BUL	CRO	CZE	HUN	MOL	POL	ROM	SER	SLOVA	SLOVE	FYROM	TUR
1) Number of groups present in the country	20-30	1-10	More than 50	10 approx.	From 20 to more than 50	More than 50	50 approx.	More than 50	More than 50	From 20 to more than 50	20-30	More than 50	1-10	More than 50
2) Average number of participants in each group	3-10	3-10	10 approx.	5-30	10-30	20-30 approx.	10-20	10-20	10-50	10 approx.	10-20	3-10	10 approx	10-20
3) Structure of the groups	HI/HO	HO/PR	HI/HO	HO/PR	HI/HO/PR	HI	HI	HI/PR	HI/HO/PR	HO	HI	HI/HO/PR	HI	HI/HO
4) Existence of groups made up exclusively of nationals	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
5) Existence of groups made up of nationals and non-nationals	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO
6) Existence of groups made up exclusively of non nationals	NO	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO
7) Existence of cooperation between groups made up of nationals and groups made up of non-nationals		YES	YES	-	YES	NO	YES	YES	YES	YES	-	YES	YES	-

LEGENDA:

HI = mostly hierarchical; HO = mostly horizontal; PR = mostly on a project basis

- = not answered

Possible answers: YES/NO/PARTIAL

AREA 2. Activities of the organised criminal groups														
8) Activities committed	ALB	BIH	BUL	CRO	CZE	HUN	MOL	POL	ROM	SER	SLOVA	SLOVE	FYROM	TUR
- Armed robbery	X	X	-	X	X	X	X	X	X	X	-	X	X	-
- Bank frauds	X	-	X	X	-	X	X	X	X	X	-	-	X	X
- Child pornography	-	-	-	-	X	-	-	X	X	-	-	-	-	-
- Computer crimes	-	-	X	X	-	X	X	X	X	X	X	X	X	X
- Drug production	X	-	X	-	X	X	X	X	X	X	-	-	-	X
- Drug trafficking	X	X	X	X	X	X	X	X	X	X	X	X	X	X
- Environmental crime	-	-	-	-	-	-	-	-	-	-	X	-	-	-
- Forgery	X	X	X	X	X	X	X	X	X	X	-	X	X	X
- Frauds	X	-	X	X	X	X	X	X	X	X	X	X	X	X
- Gambling	X	-	X	X	X	-	-	-	-	X	-	-	-	X
- Homicide	X	-	X	X	X	-	X	X	-	X	X	X	X	X
- Illegal activities surrounding prostitution	X	X	X	X	X	X	X	X	X	X	X	X	X	X
- Insurance scams	X	-	-	X	X	-	-	X	-	X	-	-	X	-
- Intellectual property infringements	-	-	X	X	X	X	-	X	-	X	-	-	X	X
- Kidnapping for ransom	X	-	-	X	X	-	X	X	-	X	-	X	X	X
- Loan sharking/Usury	X	-	X	X	-	-	X	X	-	-	X	X	-	X

LEGENDA:

- = the involvement of OC groups in carrying out the activity / the infiltration of organised criminal groups is not verified as regards to the country
- X = the involvement of OC groups in carrying out the activity / the infiltration of organised criminal groups is verified as regards to the country

	ALB	BIH	BUL	CRO	CZE	HUN	MOL	POL	ROM	SER	SLOVA	SLOVE	FYROM	TUR
- Money laundering	X	X	X	X	X	X	X	X	X	X	X	X	X	X
- Production/sale of pirate CDs /software	-	X	X	X	X	-	X	X	-	X	-	-	X	X
- Racketeering	X	X	X	X	X	X	X	X	-	X	X	X	X	X
- Smuggling of cigarettes	X	X	X	X	X	X	X	X	X	X	X	X	X	X
- Smuggling of cultural artefacts	X	-	X	X	X	-	X	X	-	X	-	-	X	X
- Smuggling of endangered species	-	-	-	-	X	-	-	-	-	X	-	-	-	-
- Smuggling of petrol	X	X	X	X	X	X	X	X	-	X	X	X	X	X
- Trafficking in human beings	X	X	X	X	X	X	X	X	X	X	X	X	X	X
- Trafficking of explosives	-	X	X	X	X	X	X	X	-	X	-	X	X	X
- Trafficking of human organs	-	-	-	-	-	-	X	-	-	-	-	-	-	-
- Trafficking of nuclear material	-	-	X	-	-	-	-	-	X	-	-	-	-	-
- Trafficking of weapons	X	X	X	X	X	X	X	X	-	X	X	X	X	X
- Vehicle theft	X	X	X	X	X	X	X	X	X	X	X	X	X	X
- Vehicle trafficking	X	-	X	X	X	X	X	X	X	X	X	X	X	X

LEGENDA:

- = the involvement of OC groups in carrying out the activity is not verified as regards to the country
X = the involvement of OC groups in carrying out the activity is verified as regards to the country

	ALB	BIH	BUL	CRO	CZE	HUN	MOL	POL	ROM	SER	SLOVA	SLOVE	FYROM	TUR
9) Geographic scope of groups' activities	N/T	N	N/T	N/T	T	N	N/T	N/T	N	N/T	N	N/T	T	N
10) Cooperation with groups based abroad in carrying out TOC activities	YES	YES	YES	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES

LEGENDA:

N = activities are committed mainly within the country

T = activities are committed mainly in more than one country

N/T = activities are committed equally within the country and in one or more other countries

11) Infiltration of groups in the legitimate economy	ALB	BIH	BUL	CRO	CZE	HUN	MOL	POL	ROM	SER	SLOVA	SLOVE	FYROM	TUR
a. Casinos	X	-	X	-	X	-	-	X	X	X	X	X	-	-
b. Construction sector	X	-	X	-	X	-	-	X	X	-	-	-	X	X
c. Financial sector	X	-	X	X	X	-	X	X	X	X	-	X	X	X
d. Legal professions	X	-	X	-	X	-	-	X	-	X	-	-	-	X
e. Nightlife services	X	X	X	X	X	-	X	X	X	X	X	X	X	X
f. Procurement	X	-	-	X	X	X	X	X	-	-	-	-	X	X
g. Real estate	X	X	X	X	X	-	X	X	X	X	X	X	X	X
h. Tourism	X	X	X	X	X	-	X	X	X	-	-	-	X	X
i. Other	-	-	Whole sale trading /fast moving goods	-	Waste disposal sector	-	-	-	-	Trade in excise goods	Pubs, restaurants and companies	-	-	-

LEGENDA:

- = the infiltration of organised criminal groups is not verified as regards to the country
X = the infiltration of organised criminal groups is verified as regards to the country

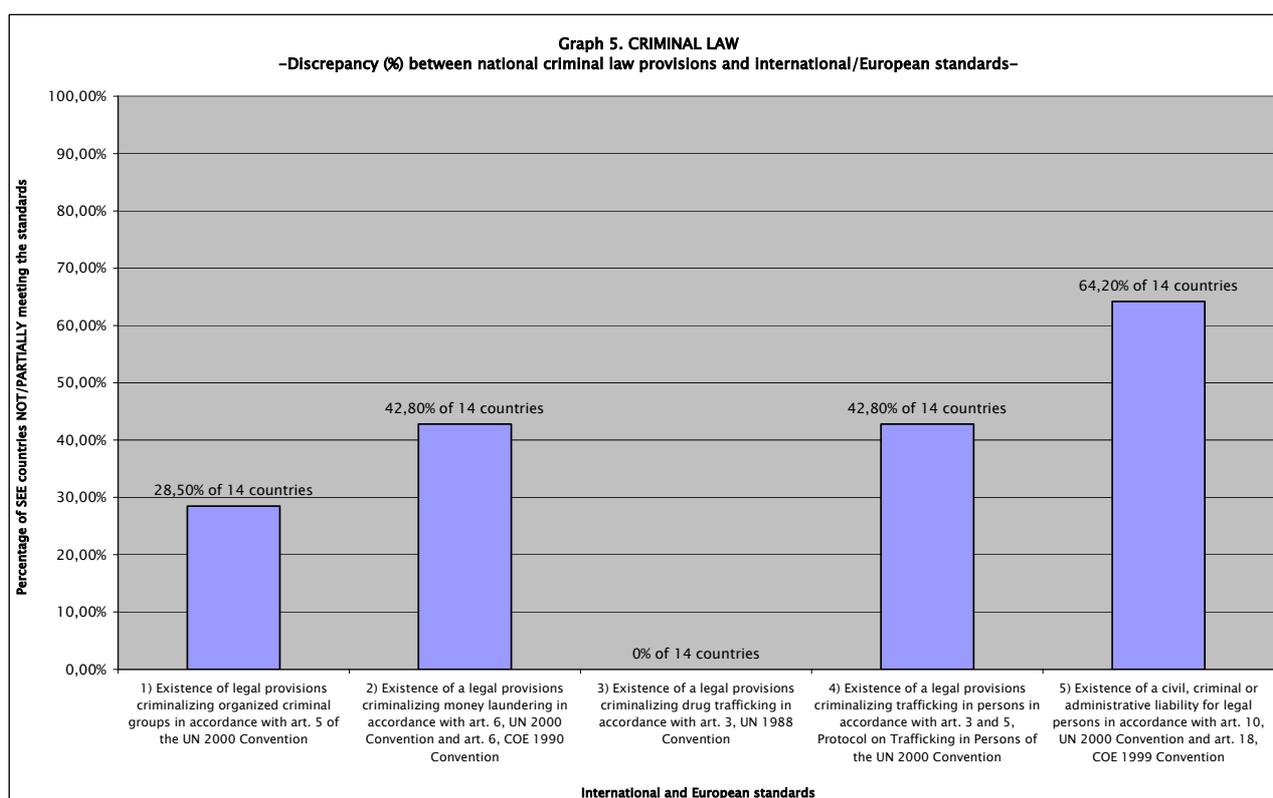
9.2. LEGISLATION ON INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANIZED CRIME

9.2.1. CRIMINAL LAW

Graph 5 illustrates the level of discrepancy between national criminal law provisions and the international and European standards at a regional level. The percentage of discrepancy is calculated on the number of SEE countries that do not meet or only partially meet the standards (where 0%=ALL the SEE countries fully adhere to the standard; 100%=NONE of the SEE countries fully adhere to the standard).

When data on the specific standard are not available for one or more SEE countries (i.e. no answer is provided or the standard is not applicable), the percentage is calculated on the number of countries for which data is available. The number of responding countries is duly acknowledged in the related columns to the right of the percentage.

The detailed results per country are presented in Synoptic Table 2 at the end of paragraph 9.2.



Finding 6. In general: a lack of harmonisation in the criminal definitions of OC activities

With regard to criminal activities typically linked to organized crime, steps have been made towards full compliance with the standards set out by the international community. There has been widespread ratification of the international and European legal instruments of reference and the recent enactment of relative national legal instruments. All SEE countries have recognised the definition of drug trafficking given by the United Nations legal instruments in their legislation. Furthermore, money laundering and participation in an organised criminal group are criminalized in all SEE national jurisdictions.

Despite these improvements, it is also evident that discrepancies with international and European standards exist, especially in the national definitions of money laundering, participation in an organised criminal group, and in sanctioning the liability of legal persons (see Findings 7, 8 and 9 for details).

This lack of harmonisation in criminal law definitions and instruments is also confirmed by the experts interviewed, who consider it as one of the greatest obstacles to international judicial and police cooperation.

Finding 7. In particular: the lack or incompleteness of provisions regarding corporate liability

One important specific application of Finding 6 regards the problem of liability of legal persons. All the SEE countries ratified the COE Criminal Law Convention on Corruption (CETS No. 173), and ten SEE countries ratified the Palermo Convention. However, only five SEE countries have recently written the standards included in art. 18 of the COE Convention and art. 10 of the Palermo Convention (Bosnia-Herzegovina in 2003, Croatia in 2002, Moldova in 2003, Poland in 2003 and Slovenia in 2000) into their national legislation.

Other countries do not have any type of liability for legal persons or have incomplete provisions regarding it. Turkey's legislation does contain provisions on criminal and administrative liability of corporations, but these only cover bribery and money laundering offences and not all the other activities typically linked to organised crime. The Republic of Serbia provides for corporate liability, but only for minor offences regarding economic crimes.

Finding 8. In particular: the vagueness of the conduct required for participation in an OC group and trafficking in human beings

Other discrepancies derive from the definitions of the objective element required for participation in an organised criminal group, which in some states (the Czech Republic, Hungary, Poland, and FYRoM) do not make full reference to the conducts prescribed in the Palermo convention. This renders the identification of the crime, the application of the norm by prosecutors in the national context and cooperation with other countries in OC cases difficult.

In some jurisdictions (namely, Croatia⁷⁵⁴ and the Czech Republic) there is no specific offence of trafficking in persons, but a series of legal provisions, which do not fully implement the standards of the UN Additional Protocol on trafficking of the Palermo Convention. In other jurisdictions there is no clear distinction between trafficking in human beings and the cases of voluntary illegal immigration (Albania), or the issue of consent is not correctly addressed (Bosnia and Herzegovina). Finally, in Poland and in Slovenia, even though there is no clear definition of trafficking in persons, legislation is forthcoming and, in fact, prosecutors apply the UN Additional Protocol on trafficking of the Palermo Convention.

Finding 9. In particular: the lack of criminalisation of 'money laundering by negligence' and the vagueness of the conducts required

While money laundering is criminalised in all the SEE countries, almost half of the countries considered do not fully implement the standards set out in the main international instruments on money laundering.

Specifically, the subjective threshold for punishing money laundering is too high in some countries (namely, the Czech Republic, Poland, Romania and Turkey), thus making it difficult to provide mutual legal assistance when the intentional element of the money laundering offence, for which the request is made, is negligence or 'should have known' standard.

In other countries the objective element of the definition is too restrictive to be applied in case of international cooperation. For example, the conduct of money laundering criminalized in Bosnia and Herzegovina is limited in its scope, because it is nationally oriented, while in FYRoM the definition is economics oriented thus creating problems in its interpretation.

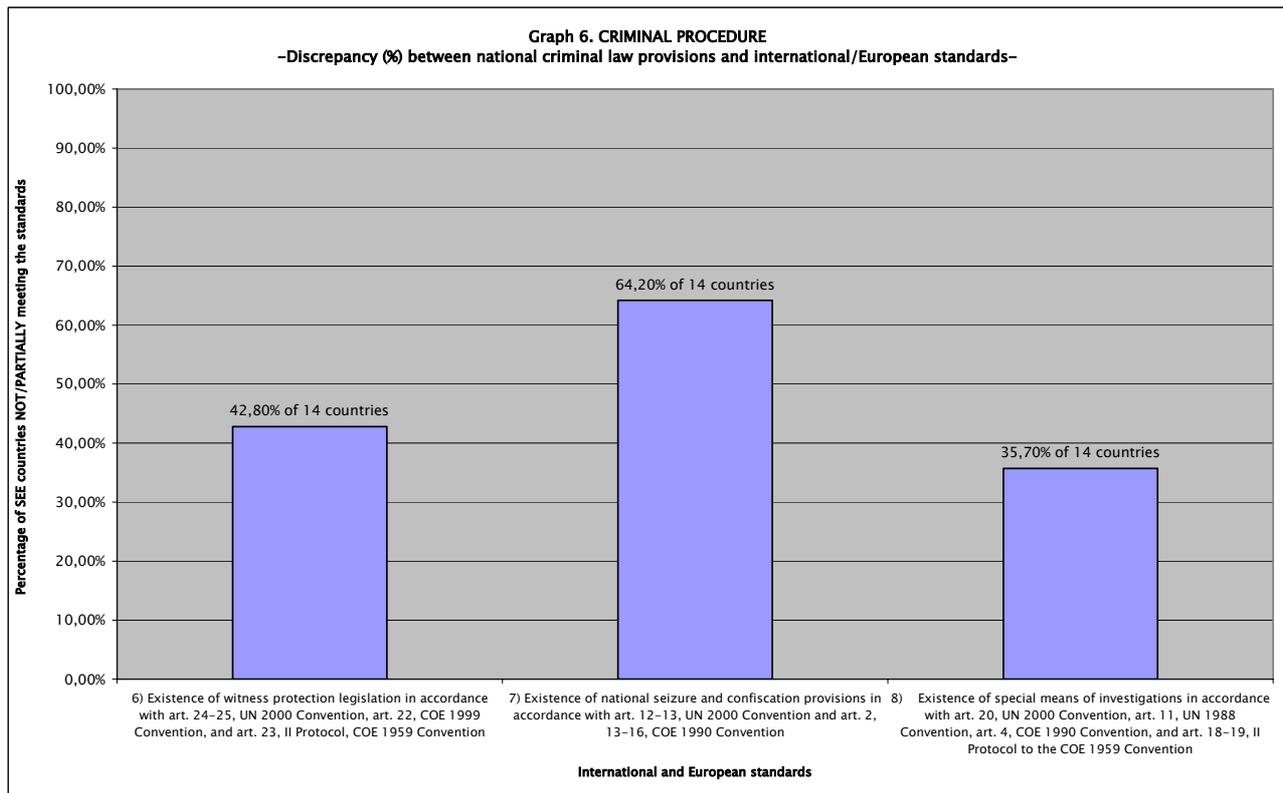
9.2.2. CRIMINAL PROCEDURE

Graph 6 illustrates the level of discrepancy between national criminal law (procedural) provisions and the international and European standards at a regional level. The percentage of discrepancy is calculated on the number of SEE countries, which do not meet or only partially meet the standards (where 0%=ALL the SEE countries fully adhere to the standard; 100%=NONE of the SEE countries fully adhere to the standard).

When data on the specific standard are not available for one or more SEE countries (i.e. no answer is provided or the standard is not applicable), the percentage is calculated on the number of the countries, for which data is available. The number of responding countries is duly acknowledged in the related columns to the right of the percentage.

The detailed results per country are presented in Synoptic Table 2 at the end of paragraph 9.2.

⁷⁵⁴ The offence of trafficking in persons should have entered into force in January 2004 in Croatia, but it is still not applicable because the Constitutional Court of Croatia did not pass the amendments of the Criminal Code.



Finding 10. In general: the lack of harmonisation of criminal procedure instruments

The same comment made in 9.2.1 (criminal law provisions) applies here, even rapid developments are taking place in this sector and reforms are forthcoming. While the international and European instruments containing the standards on witness protection, seizure and confiscation and special means of investigation, have been largely ratified, they do not seem to have been correctly enacted in national legislation.

This finding is especially true with regard to witness protection and seizure and confiscation provisions (see Findings 11, 12 and 13 for details).

Finding 11. In particular: the absence or incompleteness of witness protection provisions

There are at least three countries (Bosnia and Herzegovina,⁷⁵⁵ Serbia and Montenegro⁷⁵⁶ and FYRoM⁷⁵⁷) that do not yet provide witness protection legislation and another three countries (Bulgaria, Moldova and Slovenia) that provide an inadequate level of witness protection. Besides the lack of specific technological

⁷⁵⁵ BiH has very recently enacted a Law on the Protection of Threatened and Endangered Witnesses, but this legislation lacks the necessary legal and operational instruments for its application.

⁷⁵⁶ In the Republic of Serbia, a law (drafted with OSCE consultancy) is in preparation and its adoption is envisaged by the end of 2004.

⁷⁵⁷ Draft proposals to amend and supplement the Macedonian criminal procedure code provisions on witness protection are currently being evaluated.

devices to guarantee witness anonymity (e.g. video links for interviewing witnesses), these countries encounter difficulties in providing protection to the families of witnesses and in the implementation of a witness protection strategy.⁷⁵⁸

Finding 12. In particular: the weaknesses in confiscation systems

All the SEE countries provide legal systems for confiscation (called ‘forfeiture’ in some jurisdictions). However, a recurrent feature of these systems is the impossibility of adopting such measures in the early stages of criminal proceedings due to the necessity of a criminal conviction. Another element of deviance from international and European standards is the high level of proof requested from prosecutors, in almost all the jurisdictions, in order to confiscate. In fact, even if there is a probable cause to believe that the assets of a suspect derive from a criminal offence and the owner or possessor is not able to provide evidence that the gain was acquired legally, confiscation is not allowed.

The weaknesses in these systems are that confiscation cannot be achieved without a conviction and that it is governed by the same standard of proof required for the conviction of an individual.

The only exceptions to this are the confiscation systems of Bosnia and Herzegovina (adopted in 2003), Hungary, Slovakia and Slovenia.⁷⁵⁹

Finding 13. In particular: the limitations in the use of the special investigative techniques

Four countries (Bulgaria, Moldova, Romania, Serbia and Montenegro and FYRoM) suffer greater or smaller limitations in the use of special means of investigations, such as audio or video recording of events taking place on private premises, undercover operations, use of storefronts by investigative units and covert methods (e.g. controlled delivery). This represents a serious obstacle in investigations regarding TOC where these special techniques are essential for their successful completion.

9.2.3 DATA PROTECTION RULES

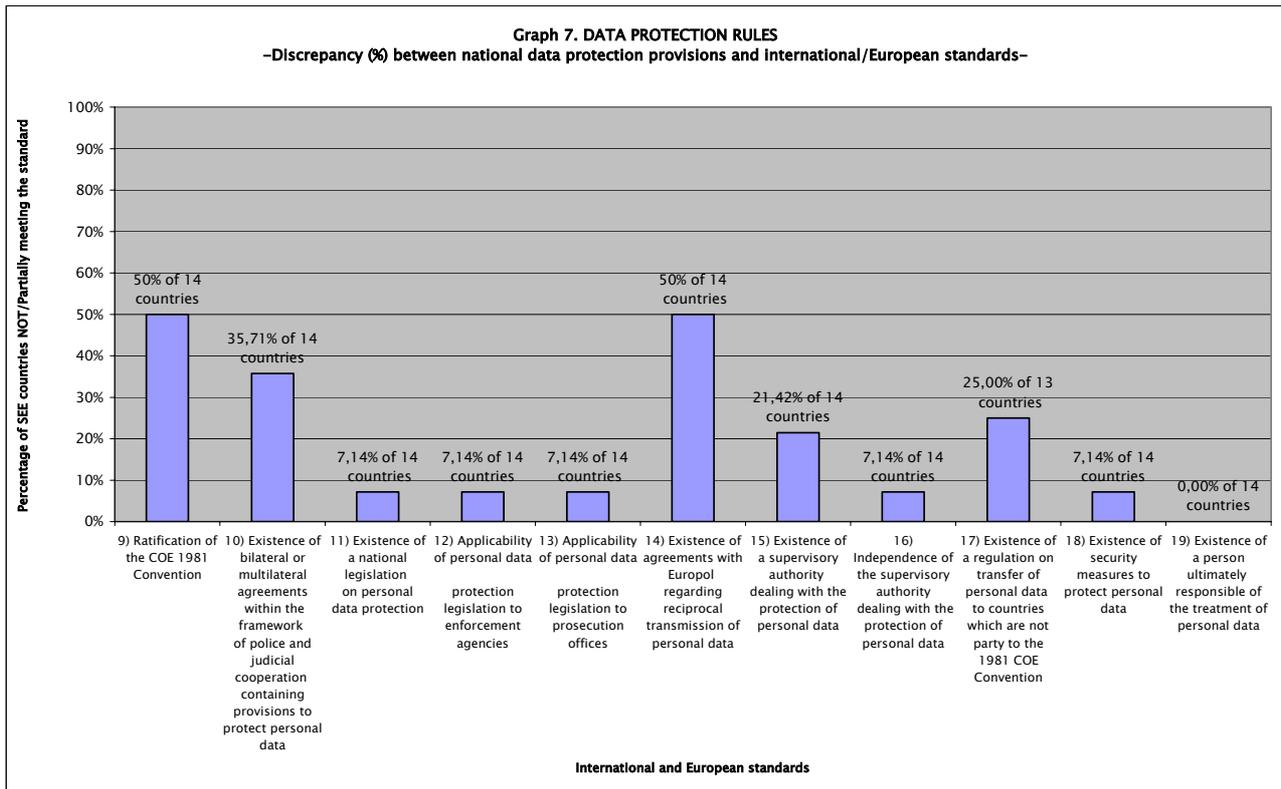
Graph 7 illustrates the level of discrepancy between national data protection provisions and international and European standards at a regional level. The percentage of discrepancy is calculated on the number of SEE countries, which do not meet or only partially meet the standards (where 0%=ALL the SEE countries fully adhere to the standard; 100%=NONE of the SEE countries fully adhere to the standard).

⁷⁵⁸ The research assessed the enactment of witness protection legislation. It should be noted, however, that the main problems indicated by the experts in this field regard the implementation of legislative provisions. In fact, it was often remarked that there is a lack of knowledge/intelligence and material means for carrying out witness protection.

⁷⁵⁹ Poland is currently preparing a draft law regarding the reversal of evidentiary burden in confiscation cases.

When data on a specific standard are not available for one or more SEE countries (i.e. no answer is provided or the standard is not applicable), the percentage is calculated on the number of the countries, for which data is available. The number of responding countries is duly acknowledged in the related columns to the right of the percentage.

The detailed results per country are presented in Synoptic Table 2 at the end of paragraph 9.2.



Finding 14. The lack of ratification instruments for the COE 1981 Convention

Unlike the previous two areas of analysis (criminal law and criminal procedure), where the ratification of international instruments is widespread, the main European convention for the protection of personal data (the COE 1981 Convention) has not been ratified by seven of the SEE countries. This data is meaningful as it shows a lack of recognition of the European framework of reference in half the countries considered. Furthermore, it affects the way in which the exchange of data occurs. Only Romania has legal provisions forbidding the transfer of personal data to countries, which are not party to the 1981 Convention. It should be mentioned that the majority of SEE countries have adopted regulations prescribing measures for the transfer of personal data.

Finding 15. The scarcity of agreements with Europol for the reciprocal transmission of data

The majority of SEE countries have signed bilateral and multilateral agreements within the framework of police and judicial cooperation containing provisions to protect personal data. However, there are fewer agreements with Europol regarding the reciprocal transmission of personal data. This gap is thus impairing cooperation with Europol in half of the countries considered, as the Europol Convention requires an agreement, based on an evaluation of the system of data protection, in order to exchange data with 'third countries' (i.e. non EU Member States).

Finding 16. The common adoption of legislation and of some measures to protect data

Even if formal instruments of endorsement of the international and European standards have not yet been enacted in all the SEE countries but Turkey,⁷⁶⁰ there are specific legislative acts dealing with the protection of data, which also apply to law enforcement agencies and prosecution offices.⁷⁶¹ Only three countries (Serbia and Montenegro, FYRoM and Turkey) do not have a supervisory authority dealing with the protection of personal data and most of the countries considered have adopted organisational measures to make sure that data are processed securely.

9.1.4 MULTILATERAL AND BILATERAL AGREEMENTS

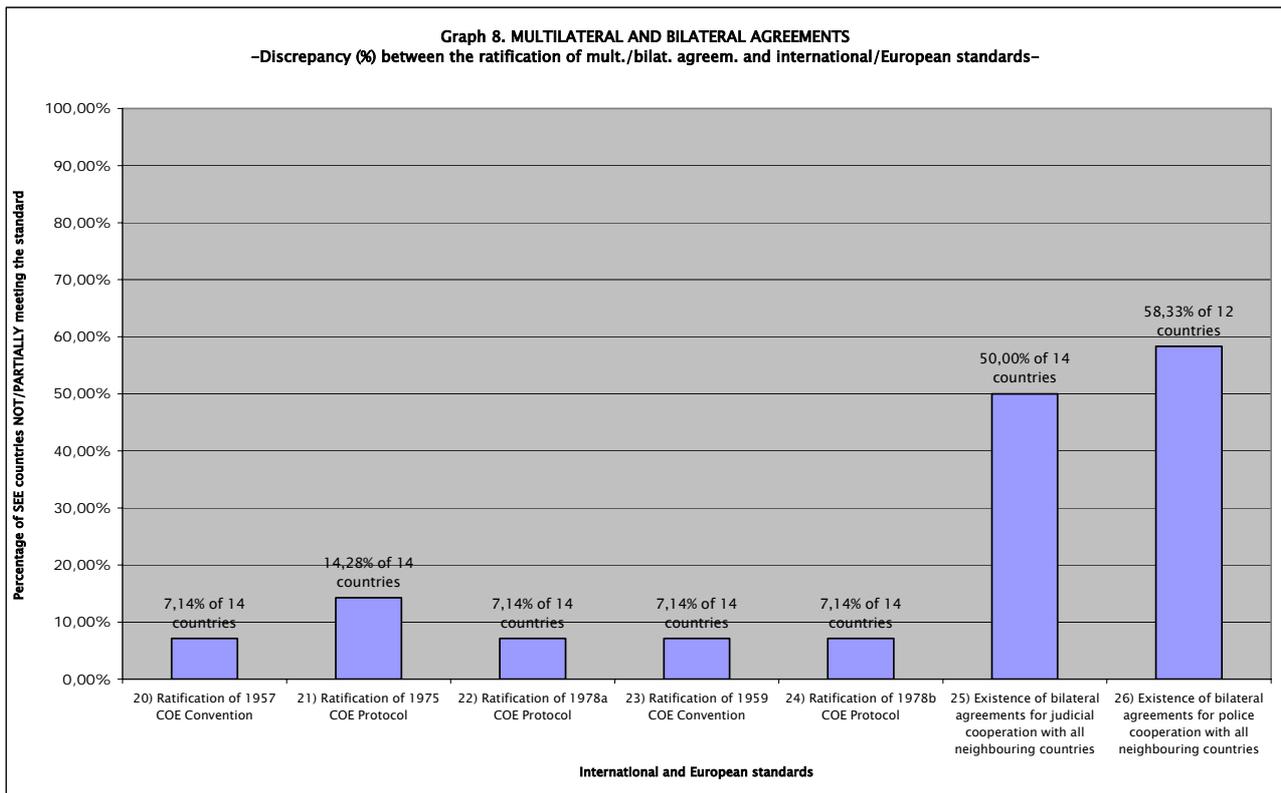
Graph 8 illustrates the level of discrepancy between the ratification of multilateral and bilateral agreements and the international and European standards at the regional level. The percentage of discrepancy is calculated on the number of SEE countries, which do not meet or only partially meet the standards (where 0%=ALL the SEE countries fully adhere to the standard; 100%=NONE of the SEE countries fully adhere to the standard).

When data on a specific standard are not available for one or more SEE countries (i.e. no answer is provided or the standard is not applicable), the percentage is calculated on the number of the countries, for which data is available. The number of responding countries is duly acknowledged in the related columns to the right of the percentage.

The detailed results per country are presented in Synoptic Table 2 at the end of paragraph 9.2.

⁷⁶⁰ It should be specified that, even if Turkey is still in the process of ratifying the 1981 COE Convention and it does not yet have a separate law covering all the aspects of the protection of personal data, there is a specific provision (art. 10 of Law n. 4422 on the Prevention of Benefit-Oriented Criminal Organisations) that prohibits and severely punishes the disclosure and misuse of any personal data gathered during the investigation of organised criminal groups.

⁷⁶¹ Albanian Law on the protection of personal data includes an exception to the general applicability of data protection rules to law enforcement agencies and prosecution offices (art. 4).



Finding 17. The preference accorded to the multilateral approach

With regards to the level of ratification of the main international and European instruments for police and judicial cooperation, it appears that all the SEE countries have ratified the relevant COE multilateral instruments, with the sole exception of Bosnia and Herzegovina, which did not ratify any of them.

Finding 18. The scarcity of bilateral agreements

Unlike multilateral agreements, the conclusion of bilateral agreements seem to be less common, as little more than half of the SEE countries have an agreement with all the neighbours for both police and judicial cooperation.

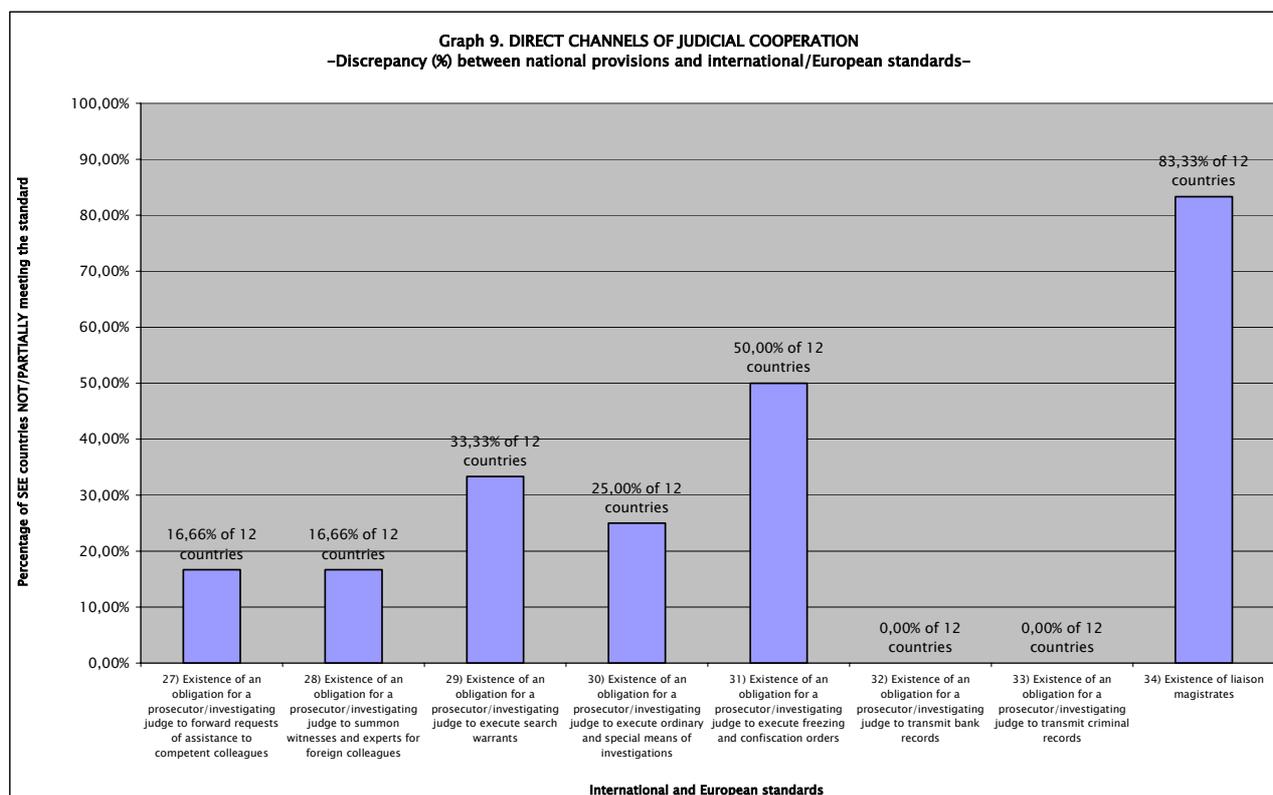
While multilateral agreements are essential for international cooperation purposes, the importance of bilateral agreements should not be overlooked, because only through them it is possible to achieve a more precise definition of concepts and *modus operandi* and thus achieve a better level of cooperation.

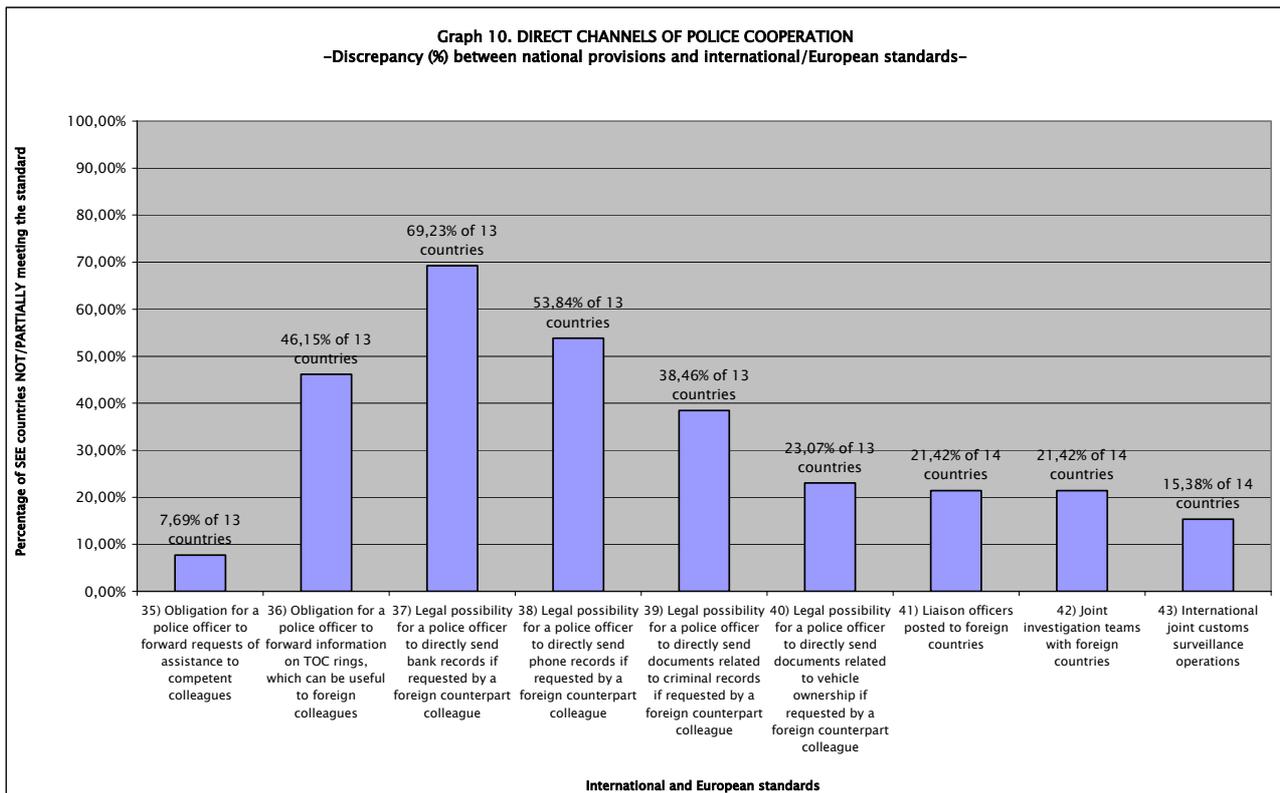
9.1.5 DIRECT CHANNELS OF POLICE AND JUDICIAL COOPERATION

Graphs 9 and 10 illustrate the level of discrepancy between national provisions and the international and European standards at the regional level. The percentage of discrepancy is calculated on the number of SEE countries, which do not meet or only partially meet the standards (where 0%=ALL the SEE countries fully adhere to the standard; 100%=NONE of the SEE countries fully adhere to the standard).

When data on the specific standard are not available for one or more SEE countries (i.e. no answer is provided or the standard is not applicable), the percentage is calculated on the number of the countries, for which data is available. The number of responding countries is duly acknowledged in the related columns to the right of the percentage.

The detailed results per country are presented in Synoptic Table 2 at the end of paragraph 9.2.





Finding 19. The existence for prosecutors of legal obligations to directly exchange data and cooperate

In the majority of SEE countries public prosecutors/investigating judges are obliged to facilitate the activity of their foreign counterpart colleagues by forwarding requests for assistance to competent authorities, by summoning witnesses and experts for foreign colleagues and by executing search warrants, ordinary and special means of investigation and freezing and confiscation orders. There are only a few countries where such legal obligations are not present in their entirety (Slovenia) or in a significant part (Croatia, Romania, Serbia and Montenegro).

Most notably in all SEE countries public prosecutors/investigating judges are obliged to transmit bank and criminal records.

The only area in which such direct cooperation is not assured is the execution of freezing and confiscation orders. When a prosecutor/investigating judge of a foreign country asks for the execution of a freezing or confiscation order, only in six countries (the Czech Republic, Hungary, Poland, Slovakia and FYRoM), is the competent counterpart colleague obliged to execute such an order. This gap may be explained by the discrepancies existing in SEE countries regarding confiscation (see Finding 12).

Finding 20. The legal impediments in directly exchanging data among police authorities

Fewer possibilities for directly exchanging data and cooperation are provided in the field of police cooperation in SEE countries. In fact, only in a minority of SEE countries are police officers permitted to act directly: Poland, Bosnia–Herzegovina,

Bulgaria, Hungary, Romania (except for the direct exchange of bank records), FYRoM (except for the direct exchange of phone records) and Turkey (except for the direct exchange of bank records).

The greatest legal obstacles to the direct exchange of information regard the sending by police officers of bank records, which is possible only in 4 countries, and the forwarding of information on TOC rings to interested foreign colleagues, which is a legal obligation only in half of the SEE countries.

The only exceptions to the general lack of legal instruments for the direct exchange of data are the legal obligations for a police officer to forward requests for assistance to competent colleagues in case they have no jurisdiction, which is shared by all SEE countries except Serbia and Montenegro, and the legal possibility to directly send documents related to vehicle ownership, which is shared by all SEE countries, except Albania and the Czech Republic.

Finding 21. The lack of liaison magistrates

With regards to the national legal provisions enabling the deployment of innovative channels of direct judicial cooperation, the most evident shortcoming in respect to international and European standards is the lack of deployment in foreign countries of liaison magistrates (only Bulgaria and Romania station liaison magistrates in foreign countries). This gap is attributed, in the majority of cases, not to legal impediments but to cost.

Finding 22. The deployment of innovative channels for direct police cooperation (liaison officers, joint investigation teams and international joint customs surveillance operations)

Unlike direct judicial cooperation, with regards to the national legal provisions enabling the deployment of innovative channels of direct police cooperation, the use of liaison officers is quite widespread in the SEE countries, even if Moldova and FYRoM currently have only one liaison officer located at the SECI Center in Bucharest, and Serbia and Montenegro have liaison officers stationed only in the main international organisations (Interpol, Europol and SECI Center).

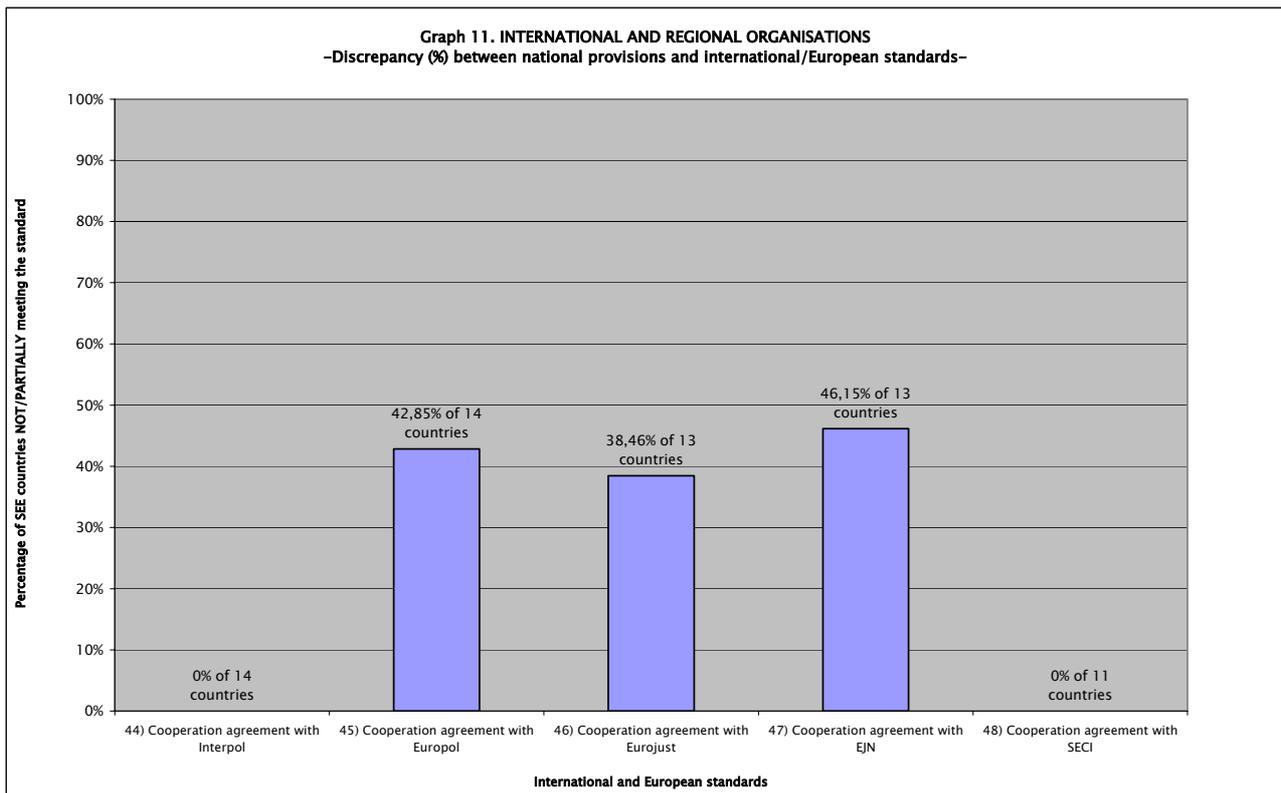
The other two channels for direct police cooperation, joint investigative teams and joint customs surveillance operations, are present in all the SEE countries except the Czech Republic, Hungary and Slovakia, where no joint investigation teams are carried out, and Moldova and Serbia and Montenegro, where no international surveillance operations are carried out.

9.1.6 INTERNATIONAL AND REGIONAL ORGANISATIONS

Graph 11 illustrates the level of discrepancy between national provisions regarding international and regional organisations (i.e. agreements and/or operative protocols) and the international and European standards at the regional level. The percentage of discrepancy is calculated on the number of SEE countries, which do not meet or only partially meet the standards (where 0%=ALL the SEE countries fully adhere to the standard; 100%=NONE of the SEE countries fully adhere to the standard).

When data on a specific standard are not available for one or more SEE countries (i.e. no answer is provided or the standard is not applicable), the percentage is calculated on the number of the countries, for which data are available. The number of responding countries is duly acknowledged in the related columns to the right of the percentage.

The detailed results per country are presented in Synoptic Table 2 at the end of paragraph 9.2.



Finding 23. The partial lack of cooperation agreements with Europol, Eurojust and EJM

The main finding here is that while all SEE countries have a cooperation agreement with Interpol, which is present with its National Central Bureaux in all these countries, almost none have a similar agreement with Europol, Eurojust and the EJM. This is often explained by the fact that most SEE countries are not EU member states and are thus not interested in developing agreements with EU organisations such as Europol and Eurojust. However, as TOC is a problem that crosses the borders of East and West Europe, the establishment of cooperation agreements (for the exchange of information, for training, for liaison officers, etc.) is encouraged by these same organisations.

Eight countries (Bulgaria, the Czech Republic, Hungary, Poland, Romania, Slovakia, Slovenia and Turkey) have signed a cooperation agreement with Europol, and Croatia is scheduled to conclude an agreement very soon. Another eight countries have signed a cooperation agreement with Eurojust (Albania, the Czech Republic, Hungary, Poland, Romania, Slovakia, Slovenia and FYRoM).

SYNOPTIC TABLE 2. POLICE AND JUDICIAL COOPERATION (LEGISLATION)

AREA 1. Criminal law														
	ALB	BIH	BUL	CRO	CZE	HUN	MOL	POL	ROM	SER	SLOVA	SLOVE	FYROM	TUR
1) Existence of legal provisions criminalizing organized criminal groups in accordance with art. 5 of the UN 2000 Convention	Yes	Yes	Yes	Yes	Partial	Partial	Yes	Partial	Yes	Yes	Yes	Yes	Partial	Yes
2) Existence of a legal provisions criminalizing money laundering in accordance with art. 6, UN 2000 Convention and art. 6, COE 1990 Convention	Yes	Partial	Yes	Yes	Partial	Yes	Yes	Partial	Partial	Yes	Yes	Yes	Partial	Partial
3) Existence of a legal provisions criminalizing drug trafficking in accordance with art. 3, UN 1988 Convention	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4) Existence of a legal provisions criminalizing trafficking in persons in accordance with art. 3 and 5, Protocol on Trafficking in Persons of the UN 2000 Convention	Partial	Partial	Yes	Partial	No	Yes	Yes	Partial	Yes	Yes	Yes	Partial	Yes	Yes
5) Existence of a civil, criminal or administrative liability for legal persons in accordance with art. 10, UN 2000 Convention and art. 18, COE 1999 Convention	No	Yes	No	Yes	No	No	Yes	Yes	No	Partial	No	Yes	No	Partial

LEGENDA (applicable to all the following tables):

n.a. = not applicable

- = not answered

Possible answers: YES/NO/PARTIAL

AREA 2. Criminal procedure														
	ALB	BIH	BUL	CRO	CZE	HUN	MOL	POL	ROM	SER	SLOVA	SLOVE	FYROM	TUR
6) Existence of witness protection legislation in accordance with art. 24–25, UN 2000 Convention, art. 22, COE 1999 Convention, and art. 23, II Protocol, COE 1959 Convention	Yes	No	Partial	Yes	Yes	Yes	Partial	Yes	Yes	No	Yes	Partial	No	Yes
7) Existence of national seizure and confiscation provisions in accordance with art. 12–13, UN 2000 Convention and art. 2, 13–16, COE 1990 Convention	Partial	Yes	Partial	Partial	Partial	Yes	Partial	Partial	Partial	Yes	Yes	Yes	Partial	Partial
8) Existence of special means of investigations in accordance with art. 20, UN 2000 Convention, art. 11, UN 1988 Convention, art. 4, COE 1990 Convention, and art. 18–19, II Protocol to the COE 1959 Convention	Yes	Yes	Partial	Yes	Yes	Yes	Partial	Yes	Partial	Partial	Yes	Yes	No	Yes

AREA 3. Data protection rules														
	ALB	BIH	BUL	CRO	CZE	HUN	MOL	POL	ROM	SER	SLOVA	SLOVE	FYROM	TUR
9) Ratification of the COE 1981 Convention	No	No	Yes	No	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No	No
10) Existence of bilateral or multilateral agreements within the framework of police and judicial cooperation containing provisions to protect personal data	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No	Yes
11) Existence of a national legislation on personal data protection	Yes	Yes	Yes	Yes	No									
12) Applicability of personal data protection legislation to enforcement agencies	No	Yes	Yes	Yes	Yes	Yes								
13) Applicability of personal data protection legislation to prosecution offices	No	Yes	Yes	Yes	Yes	Yes								
14) Existence of agreements with Europol regarding reciprocal transmission of personal data	No	No	Yes	No	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No	No
15) Existence of a supervisory authority dealing with the protection of personal data	Yes	No	Yes	Yes	No	No								
16) Independence of the supervisory authority dealing with the protection of personal data	Yes	n.a.	Yes	No	n.a.	n.a.								

AREA 4. Multilateral and bilateral agreements														
	ALB	BIH	BUL	CRO	CZE	HUN	MOL	POL	ROM	SER	SLOVA	SLOVE	FYROM	TUR
20) Ratification of 1957 COE Convention	Yes	No	Yes	Yes	Yes	Yes								
21) Ratification of 1975 COE Protocol	Yes	No	Yes	Yes	Yes	No								
22) Ratification of 1978a COE Protocol	Yes	No	Yes	Yes	Yes	Yes								
23) Ratification of 1959 COE Convention	Yes	No	Yes	Yes	Yes	Yes								
24) Ratification of 1978b COE Protocol	Yes	No	Yes	Yes	Yes	Yes								
25) Existence of bilateral agreements for judicial cooperation with all neighbouring countries	Yes	No	Yes	Yes	Yes	No	No	No	Yes	No	Yes	No	No	No
26) Existence of bilateral agreements for police cooperation with all neighbouring countries	-	Yes	Yes	-	Yes	No	No	No	No	No	Yes	Yes	No	No

AREA 5. Direct channels of police and judicial cooperation														
JUDICIAL	ALB	BIH	BUL	CRO	CZE	HUN	MOL	POL	ROM	SER	SLOVA	SLOVE	FYROM	TUR
27) Existence of an obligation for a prosecutor/investigating judge to forward requests of assistance to competent colleagues	Yes	-	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	-
28) Existence of an obligation for a prosecutor/investigating judge to summon witnesses and experts for foreign colleagues	Yes	-	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	-
29) Existence of an obligation for a prosecutor/investigating judge to execute search warrants	Yes	-	Yes	No	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes	-
30) Existence of an obligation for a prosecutor/investigating judge to execute ordinary and special means of investigations	Yes	-	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes	-
31) Existence of an obligation for a prosecutor/investigating judge to execute freezing and confiscation orders	Yes	-	Partial	No	Yes	Yes	Partial	Yes	No	Partial	Yes	No	Yes	-
32) Existence of an obligation for a prosecutor/investigating judge to transmit bank records	Yes	-	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-
33) Existence of an obligation for a prosecutor/investigating judge to transmit criminal records	Yes	-	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-	Yes	Yes	Yes	-
34) Existence of liaison magistrates	No	-	Yes	No	No	No	No	No	Yes	No	No	No	No	-

	ALB	BIH	BUL	CRO	CZE	HUN	MOL	POL	ROM	SER	SLOVA	SLOVE	FYROM	TUR
35) Existence of an obligation for a police officer to forward requests of assistance to competent colleagues	Yes	Yes	Yes	No	-	Yes	Yes	Yes						
36) Existence of an obligation for a police officer to forward information on TOC rings, which can be useful to foreign colleagues	Yes	No	No	Yes	No	No	No	Yes	Yes	No	-	Yes	Yes	Yes
37) Existence of the legal possibility for a police officer to directly send bank records if requested by a foreign counterpart colleague	No	Yes	Yes	No	No	Yes	No	Partila	No	No	-	No	Yes	No
38) Existence of the legal possibility for a police officer to directly send phone records if requested by a foreign counterpart colleague	No	Yes	Yes	No	No	Yes	No	Partial	Yes	Yes	-	No	No	Yes
39) Existence of the legal possibility for a police officer to directly send documents related to criminal records if requested by a foreign counterpart colleague	No	Yes	Yes	No	No	Yes	Yes	Partial	Yes	No	-	Yes	Yes	Yes
40) Existence of the legal possibility for a police officer to directly send documents related to vehicle ownership if requested by a foreign counterpart colleague	No	Yes	Yes	Yes	No	Yes	Yes	Partial	Yes	Yes	-	Yes	Yes	Yes
41) Existence of liaison officers posted to foreign countries	Yes	Yes	Yes	Yes	Yes	Yes	Partial	Yes	Yes	Yes	Yes	Partial	Partial	Yes
42) Existence of joint investigation teams with foreign countries	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes
43) Existence of international joint customs surveillance operations	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No	-	Yes	Yes	Yes

AREA 6. International and regional organisations														
	ALB	BIH	BUL	CRO	CZE	HUN	MOL	POL	ROM	SER	SLOVA	SLOVE	FYROM	TUR
44) Existence of a cooperation agreement with Interpol	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
45) Existence of a cooperation agreement with Europol	No	No	Yes	No	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No	Yes
46) Existence of a cooperation agreement with Eurojust	Yes	No	-	No	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No
47) Existence of a cooperation agreement with EJN	Yes	No	-	No	Yes	No	No	Yes	Yes	No	Yes	Yes	Yes	No
48) Existence of a cooperation agreement with SECI Center	Yes	Yes	Yes	Yes	n.a.	Yes	Yes	n.a.	Yes	Yes	n.a.	Yes	Yes	Yes

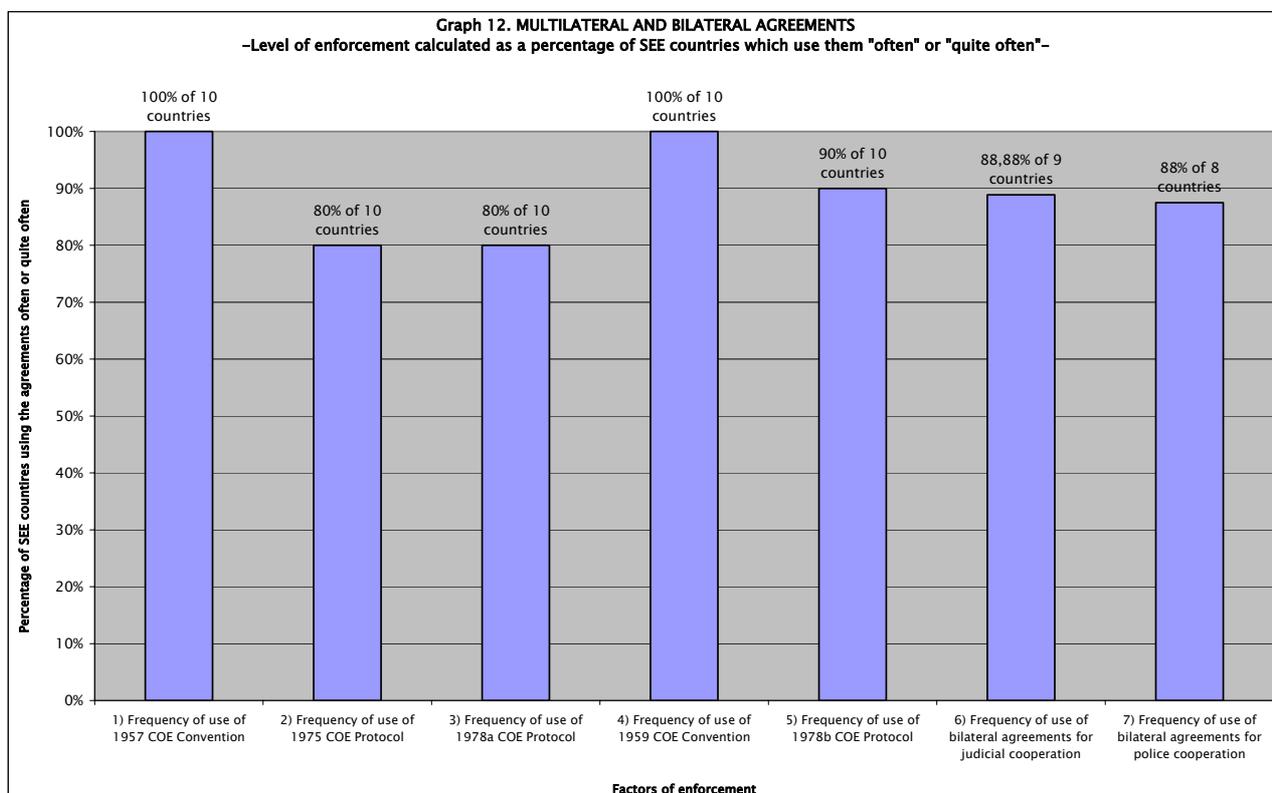
9.3. PRACTICES OF INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANIZED CRIME

9.3.1 MULTILATERAL AND BILATERAL AGREEMENTS

Graph 12 illustrates the level of enforcement of multilateral and bilateral agreements for police and judicial cooperation. The percentage of enforcement is calculated on the number of SEE countries, which 'score positively' in the various factors of enforcement. In this graph 'to score positively' means that the SEE countries use the agreements 'often' or 'quite often' (where 0%=NONE of the SEE countries use the agreement often or quite often; 100%=ALL the SEE countries use the agreement often or quite often).

When data on the specific factor of enforcement are not available for one or more SEE countries (i.e. no answer is provided or the standard is not applicable), the percentage is calculated on the number of the countries, for which data are available. The number of responding countries is duly acknowledged in the related columns to the right of the percentage.

The detailed results per country are presented in Synoptic Table 3 at the end of paragraph 9.3.



Finding 24. The similar frequency of use of multilateral and bilateral agreements

In Findings 17 and 18 it was mentioned that bilateral agreements are less common than multilateral agreements. However, where present, bilateral agreements are quite often or often used, and only in two states (Albania for judicial cooperation and Moldova for police cooperation) are they only rarely used.

This finding suggests that the usefulness of bilateral instruments is appreciated as much as the usefulness of multilateral instruments thus confirming their importance in achieving the goals of police and judicial cooperation.

Finding 25. The high level of use of 1957 and 1959 COE conventions

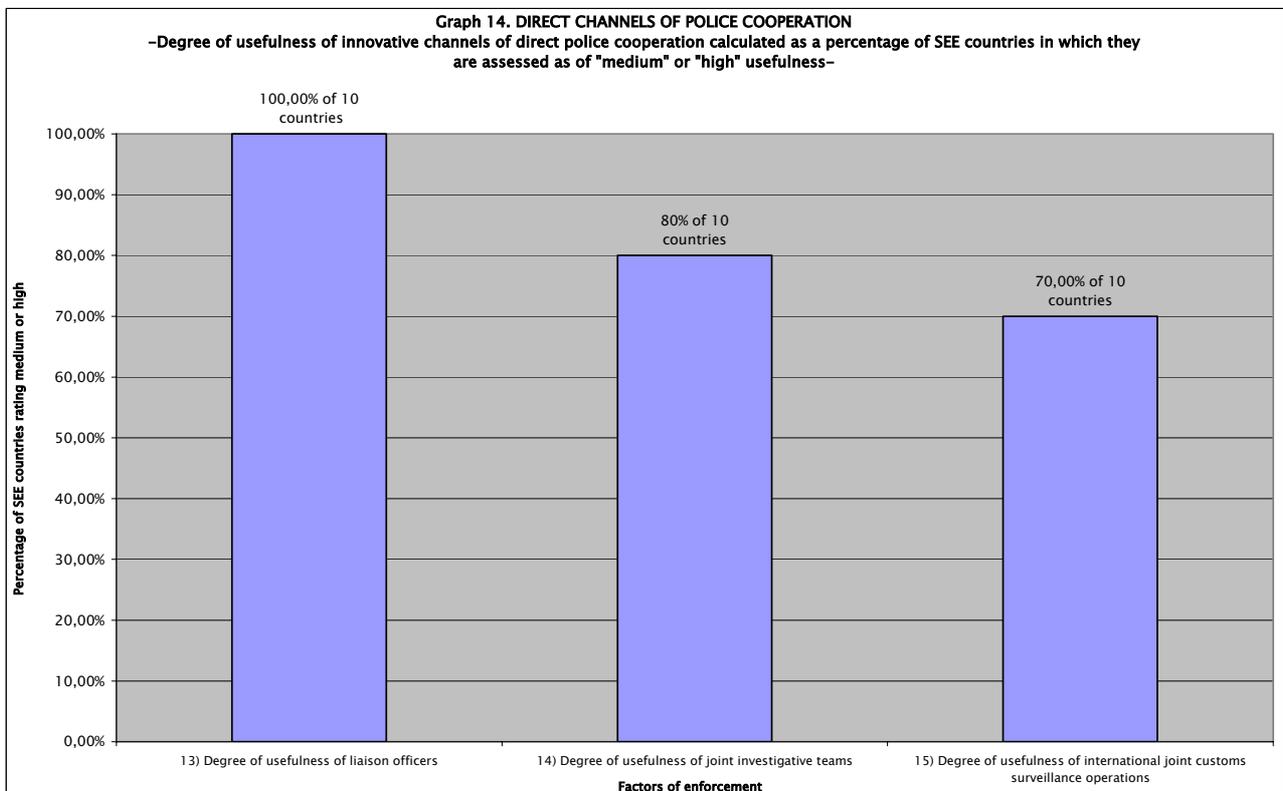
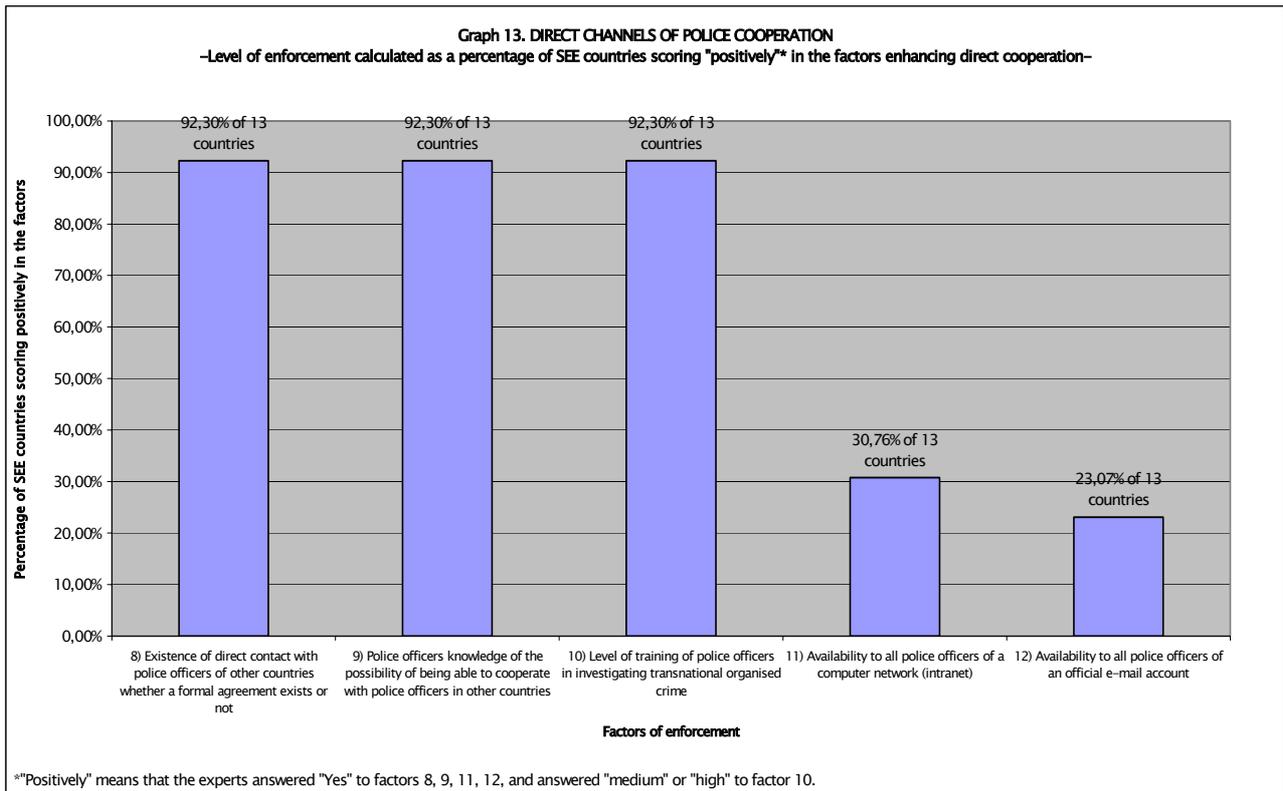
The 1957 and 1959 COE conventions are used or often used in all SEE countries, thus confirming that practitioners appreciate their value in cooperation matters.

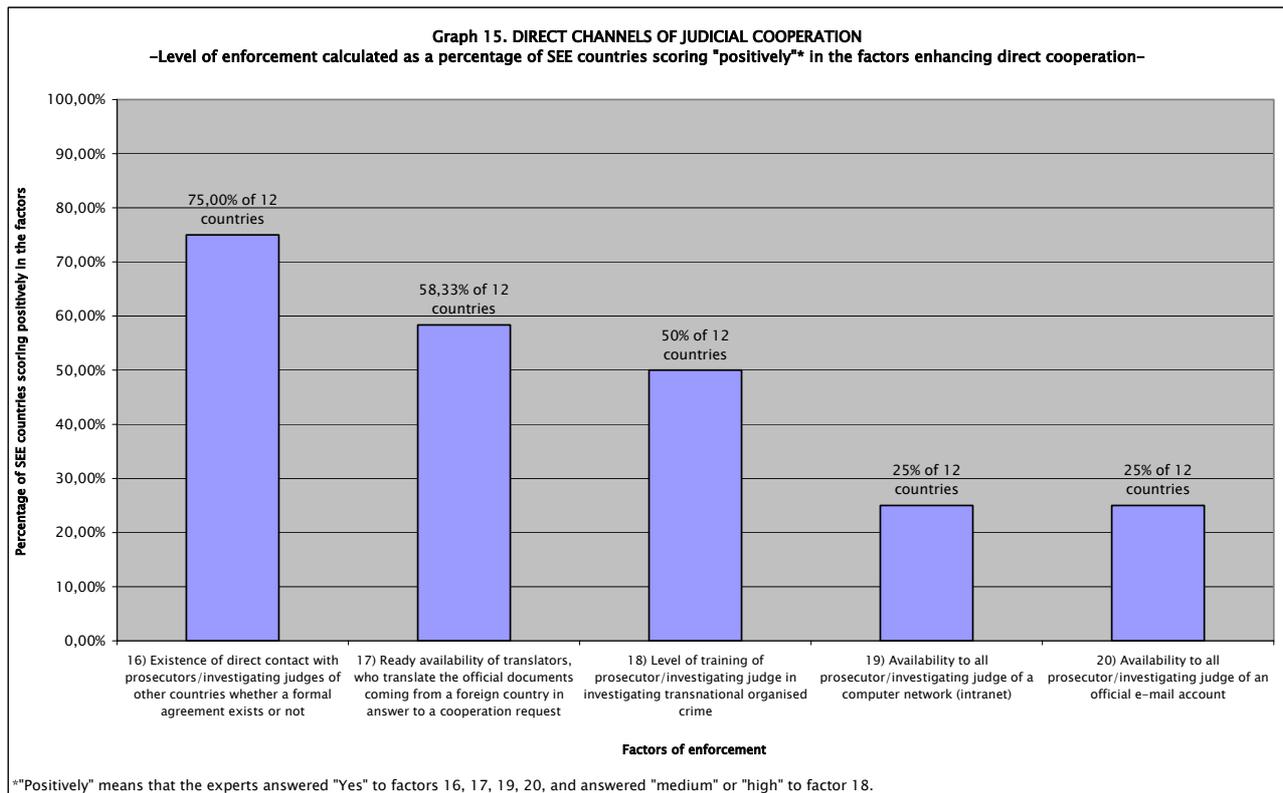
9.3.2 DIRECT CHANNELS OF POLICE AND JUDICIAL COOPERATION

Graphs 13, 14, 15 illustrate the level of enforcement of direct channels of police and judicial cooperation. The percentage of enforcement is calculated on the number of SEE countries, which 'score positively' in the various factors of enforcement. In these graph 'to score positively' means that the experts answered 'yes' with regard to factors of enforcement nn. 8-9, 11-12, 16-17 and 19-20, and answered medium or high to factors of enforcement n. 10, 13-15, and 18 (where 0%= in NONE of the SEE countries the factor of enforcement is fulfilled; 100%=in ALL the SEE countries the factor of enforcement is fulfilled).

When data on the specific factor of enforcement are not available for one or more SEE countries (i.e. no answer is provided or the standard is not applicable), the percentage is calculated on the number of the countries, for which data are available. The number of responding countries is duly acknowledged in the related columns to the right of the percentage.

The detailed results per country are presented in Synoptic Table 3 at the end of paragraph 9.3.





Finding 26. The lack of computerised equipment for fast communications

Among the most meaningful findings for both police officers and public prosecutors is the lack of computerised equipment such as a computer network and official email accounts. This lack of instruments impairs the fast communication of data, which may be essential for law enforcement activities countering TOC.

These facilities are available to all the police officers investigating TOC cases only in Slovenia, Poland and Turkey, and to all prosecutors investigating TOC cases only in the Czech Republic, Hungary and Slovenia.

Finding 27. The low level of training of public prosecutors in investigating transnational organised crime

In almost half the SEE countries (Albania, Bulgaria, Croatia, Moldova, Slovakia and FYRoM) the level of training of public prosecutors in investigating transnational organised crime is rated low. On the contrary, the level of training of police officers in investigating transnational organised crime is rated high or medium in almost all the SEE countries, except FYRoM, where it is rated low.

Finding 28. The language problem

Another obstacle to international direct cooperation is the language problem. Public prosecutors/investigating judges do not have readily available translators in almost half of the SEE countries (Albania, Croatia, Moldova, Serbia, Slovenia). The lack of readily available translations may frustrate the needs of having a fast exchange of information and cause delays that may hamper, for instance, the apprehension of OC members.

Finding 29. The practical relevance of innovative channels of direct cooperation

In view of these problems (Findings 26, 27 and 28) how the experts rated direct channels of cooperation such as liaison officers, joint investigative teams and international joint customs surveillance operations would appear meaningful. In fact, where these channels exist they are commonly considered as very useful to carry out international cooperation.

In particular, the degree of usefulness of liaison officers in the SEE countries, which have a liaison officer, is rated high (in Bulgaria, Czech Republic, Hungary, Poland, Romania, Serbia, Turkey) and medium (in Albania, Croatia, Slovenia).⁷⁶²

Joint investigative teams and international joint customs surveillance operations were also generally rated as highly useful or of medium usefulness. Only in Albania, Bosnia–Herzegovina and Croatia (only for international joint customs surveillance operations) the usefulness of these instruments was rated as low. In the case of Bosnia–Herzegovina the expert interviewed suggested that this is due to the ignorance of these instruments and not to their potential usefulness.

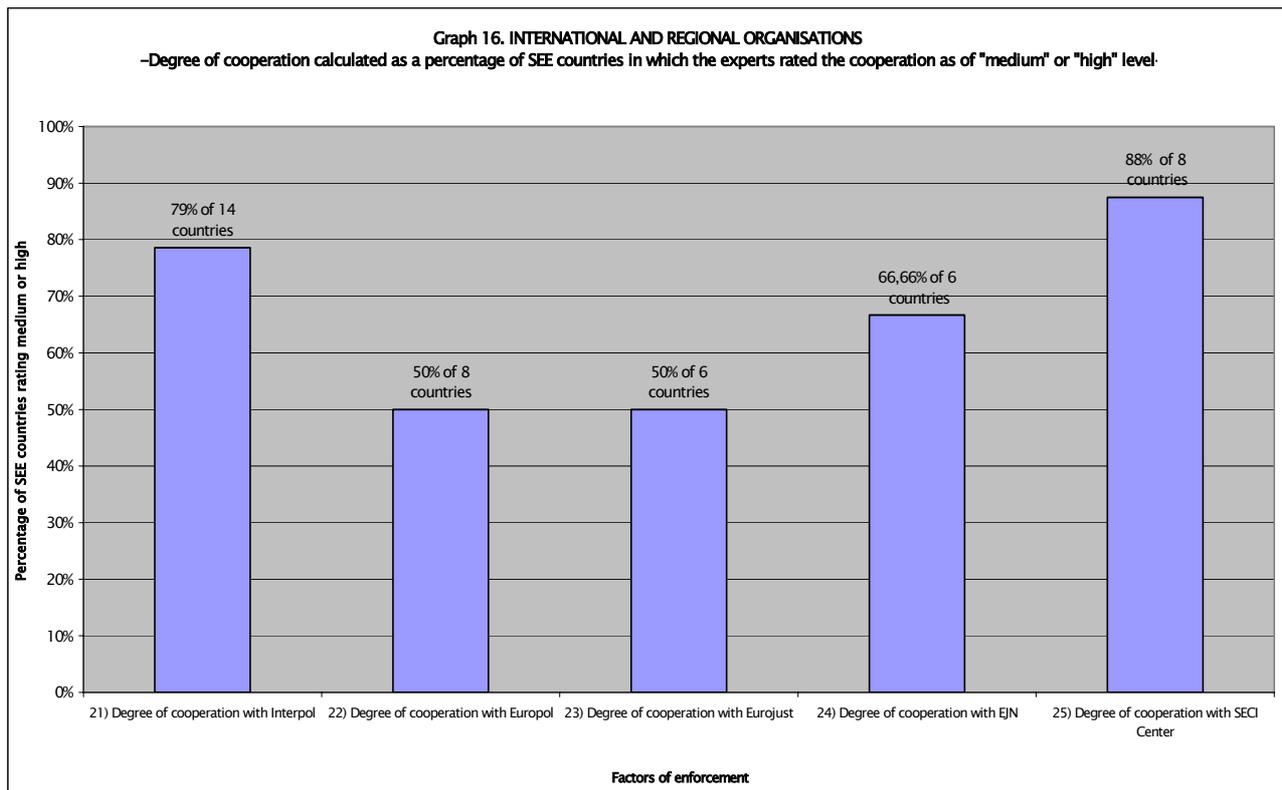
9.3.3. INTERNATIONAL AND REGIONAL ORGANISATIONS

Graph 16 illustrates the level of enforcement of cooperation with international and regional organisations. The percentage of enforcement is calculated on the number of SEE countries, which 'score positively' in the various factors of enforcement. In this graph 'to score positively' means that the expert assessed the degree of cooperation with the specific organisation as 'medium' or 'high' (where 0%=the level of cooperation of the organisation is low or even absent with all SEE countries; 100%= the level of cooperation of the organisation is medium or high with all SEE countries).

When data on the specific factor of enforcement are not available for one or more SEE countries (i.e. no answer is provided or the standard is not applicable), the percentage is calculated on the number of the countries, for which data are available. The number of responding countries is duly acknowledged in the related columns to the right of the percentage.

The detailed results per country are presented in Synoptic Table 3 at the end of paragraph 9.3.

⁷⁶² Liaison magistrates were also rated positively, but this evaluation cannot be considered as a finding, because they are present only in two countries.



Finding 30. Weaknesses in cooperation with Interpol

The level of cooperation with Interpol is on average rated as medium, with the exception of Serbia and Slovakia, where it is rated high.

There are, however, some areas, in which the cooperation with Interpol is rated 'low' or even 'not existent': the exchange of financial information on suspected entities, the exchange of liaison officers, and the participation in joint investigative teams in a support/operational capacity.

Finding 31. Weaknesses in cooperation with Europol

As noted under Finding 23 only 8 SEE countries have a cooperation agreement with Europol. Thus, the evaluation of the degree of cooperation with this organisation was possible only in these countries.

The level of cooperation with Europol is on average rated as medium. The results vary according to the different countries: the degree of cooperation with Europol is rated medium-high in Hungary, Romania, and Poland, while in the remaining countries it is lower.

In most countries the areas in which the cooperation with Europol is rated low or not existent are: the exchange of financial information on suspected entities and the participation in joint investigative teams in an operative capacity (this depending on the very nature of the Europol mandate).

Finding 32. The high level of cooperation with SECI Center

The SECI Center has been assessed as the organization, which furnishes the highest level of police cooperation to the countries where it operates and it is sometimes nominated by the experts interviewed as a 'good practice'.

SYNOPTIC TABLE 3. POLICE AND JUDICIAL COOPERATION (PRACTICES)

AREA 4. Multilateral and bilateral agreements														
	ALB	BIH	BUL	CRO	CZE	HUN	MOL	POL	ROM	SER	SLOVA	SLOVE	FYROM	TUR
1) Frequency of use of 1957 COE Convention	2	n.a.	-	3	3	2	3	3	3	-	3	3	2	-
2) Frequency of use of 1975 COE Protocol	1	n.a.	-	3	3	2	1	3	3	-	3	2	2	-
3) Frequency of use of 1978a COE Protocol	1	n.a.	-	3	3	2	1	2	3	-	3	2	2	-
4) Frequency of use of 1959 COE Convention	3	n.a.	-	3	3	3	3	3	3	-	3	3	2	-
5) Frequency of use of 1978b COE Protocol	3	n.a.	-	3	3	2	1	3	3	-	3	2	2	-
6) Frequency of use of bilateral agreements for judicial cooperation with all neighbouring countries (average)	1.2	n.a.	-	3	3	1.9	2.5	2.6	1.7	-	3	-	3	-
7) Frequency of use of bilateral agreements for police cooperation with all neighbouring countries (average)	-	-	3	-	3	-	1	3	-	-	3	2	3	2

LEGENDA:

n.a. = not applicable

- = not answered

Possible answers: a range from 0 to 3, where 0=not used; 3=often used

AREA 5. Direct channels of police and judicial cooperation														
	ALB	BIH	BUL	CRO	CZE	HUN	MOL	POL	ROM	SER	SLOVA	SLOVE	FYROM	TUR
8) Direct contact between police officers and police officers of other countries during the course of an investigation in the absence of a formal agreement	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-	Yes	Yes	Yes
9) Information given to police officers about the possibility of being able to cooperate with police officers in other countries	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-	Yes	Yes	Yes
10) Level of training of police officers in investigating transnational organised crime	2	2	3	2	2	2	2.5	2	2.5	2	-	2	1	2
11) Availability of a computer network (intranet) to all police officers	No	No	Partial	No	Yes	No	No	Yes	Partial	No	-	Yes	No	Yes
12) Availability of an official e-mail account to all police officers	No	No	Partial	No	No	No	No	Yes	Partial	No	-	Yes	No	Yes
13) Degree of usefulness of liaison officers	2	n.a.	3	2	3	3	n.a.	3	3	3	3	2	n.a.	3
14) Degree of usefulness of joint investigative teams	1	1	2	3	n.a.	n.a.	3	3	3	n.a.	-	3	2	2
15) Degree of usefulness of international joint customs surveillance operations	1	1	2	1	3	n.a.	n.a.	3	3	n.a.	-	3	3	3

	ALB	BIH	BUL	CRO	CZE	HUN	MOL	POL	ROM	SER	SLOVA	SLOVE	FYROM	TUR
16) Direct contact between prosecutors/investigating judges and prosecutors/investigating judges of other countries during the course of an investigation in the absence of a formal agreement	Yes	-	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	-
17) Ready availability to prosecutors/investigating judges of translators for the official documents from a foreign country in answer to a cooperation request	No	-	Yes	No	Yes	Yes	No	Yes	Yes	No	Yes	No	Yes	-
18) Level of training of prosecutor/investigating judge in investigating transnational organised crime	1	-	1	1	2	2	1	2	2	2	1	2	1	-
19) Availability of a computer network (intranet) to all prosecutors/investigating judges	Partial	-	Partial	No	Yes	Yes	No	No	No	No	No	Yes	No	-
20) Availability of an official e-mail account to all prosecutors/investigating judges	Partial	-	Partial	No	Yes	Yes	No	No	No	No	No	Yes	No	-

AREA 6. International and regional organisations														
	ALB	BIH	BUL	CRO	CZE	HUN	MOL	POL	ROM	SER	SLOVA	SLOVE	FYROM	TUR
21) Degree of cooperation with Interpol	1.9	2	0.7	2.5	1	2.2	1.9	2	1.6	3	3	1.8	0.5	2
22) Degree of cooperation with Europol	n.a.	n.a.	1.4	n.a.	1.3	2.6	n.a.	2	3	0	-	1.6	n.a.	n.a.
23) Degree of cooperation with Eurojust	3	n.a.	-	n.a.	-	-	n.a.	-	2.4	1	1	2	0.1	n.a.
24) Degree of cooperation with EJM	2,3	n.a.	-	n.a.	0.8	n.a.	n.a.	-	2.8	n.a.	3	2	0.3	n.a.
25) Degree of cooperation with SECI Center	-	1.5	1.5	-	n.a.	-	1.5	n.a.	2.7	1	n.a.	3	2	3

LEGENDA:

n.a. = not applicable

- = not answered

Possible answers: YES/NO/PARTIAL

Possible answers (for questions n. 10 and n. 18): a range from 0 to 3, where 0=low level of training; 3=high level of training

Possible answers (for questions nn. 13-15): a range from 0 to 3, where 0=no usefulness; 3=high usefulness

Possible answers (for questions nn. 21-25): a range from 0 to 3, where 0=no cooperation; 3=high level of cooperation

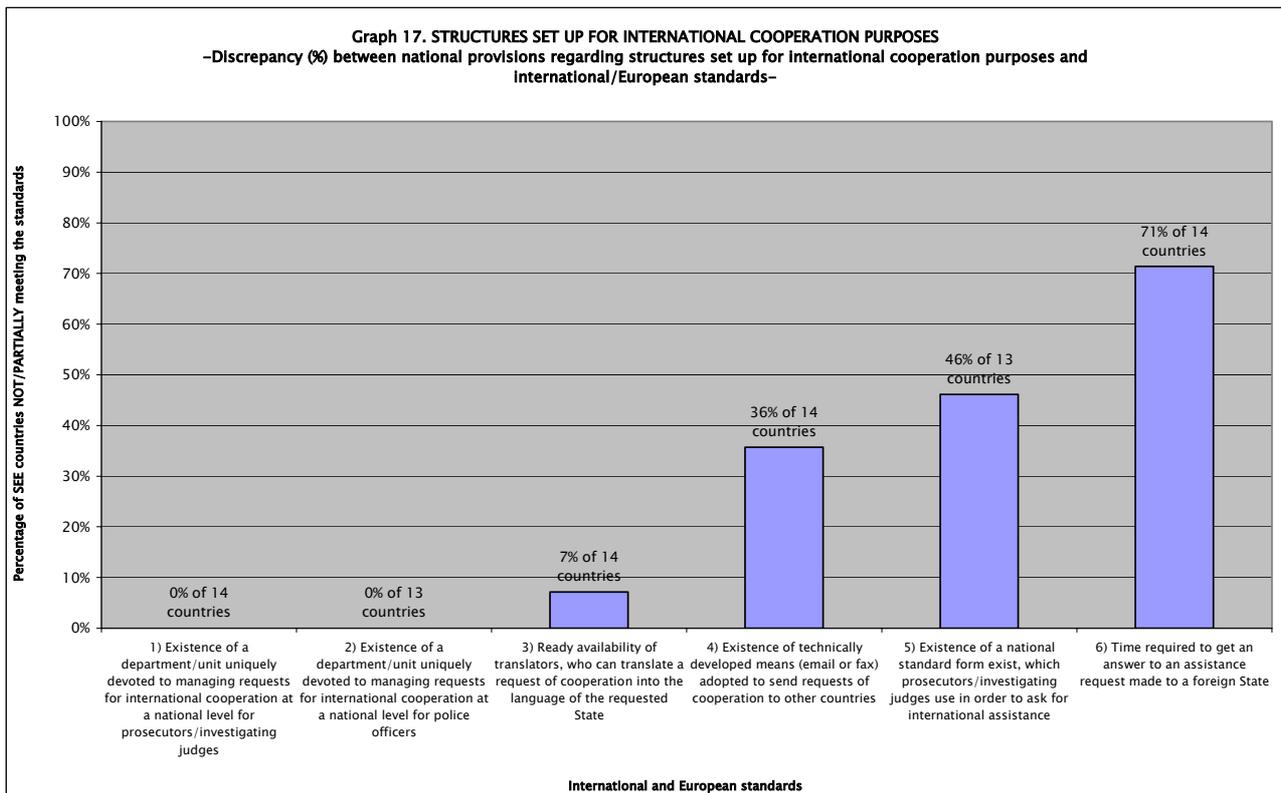
9.4. GOOD PRACTICES

9.4.1. STRUCTURES SET UP FOR INTERNATIONAL COOPERATION PURPOSES

Graph 17 illustrates the level of discrepancy between national provisions regarding the establishment and characteristics of structures set up for international cooperation purposes and international and European standards. The percentage of discrepancy is calculated on the number of SEE countries, which do not meet or only partially meet the standards (where 0%=ALL the SEE countries fully adhere to the standard; 100%=NONE of the SEE countries fully adhere to the standard).

When data on the specific standard are not available for one or more SEE countries (i.e. no answer is provided or the standard is not applicable), the percentage is calculated on the number of the countries, for which data are available. The number of responding countries is duly acknowledged in the related columns to the right of the percentage.

The detailed results per country are presented in Synoptic Table 4 at the end of paragraph 9.4.



Finding 32. The presence of specialised units for international cooperation in all SEE countries

All SEE countries have a central authority that manages requests for international cooperation. These authorities are usually the Ministry of Justice for judicial cooperation and the Ministry of Interior for police cooperation, which have introduced special units or departments into their structures to deal with these issues at a national level.

The contact details of national specialised units for police and judicial cooperation can be found in Annex 3 of the Study.

Finding 33. The ready availability of translators at the specialised units

In the above mentioned specialised units of all SEE countries, except Moldova, there is a ready availability of translators, who can translate a request for cooperation into the language of another state. The language competencies are usually extensive enough to include all the most widespread languages (e.g. English, German, French) and often all the languages commonly needed in the cooperation process.

This finding also has another important implication when compared with Finding 28, dealing with the language problems for prosecutors in cases of direct cooperation. It might be argued that central authorities have a translation service, which, if enlarged and made available to the decentralised prosecution offices could help to solve the language problems encountered by prosecutors in direct cooperation.

Finding 34. The partial adoption of computerised systems to send requests for cooperation to other countries

The majority of specialised units make use of technically advanced means to send requests for cooperation to other countries, even if five countries (Moldova, Poland, Serbia and Montenegro, Slovakia and FYRoM) do not make use of computerised systems, such as emails.

Finding 35. The scarce use of standardised forms

Less than half the SEE countries make common use of standardised forms in order to ask for international assistance. This might cause delays in the processing of cooperation requests due to the need of verify, for each assistance request, that the minimum formal and substantial standards are fulfilled.

Finding 36. The lengthiness of the procedures to get an answer to a request for judicial assistance

The process of getting an answer to these requests is fairly long: in six countries it takes more than two months, and in four countries it takes up to two months. A shorter period of time is required in Bulgaria, the Czech Republic and Romania.

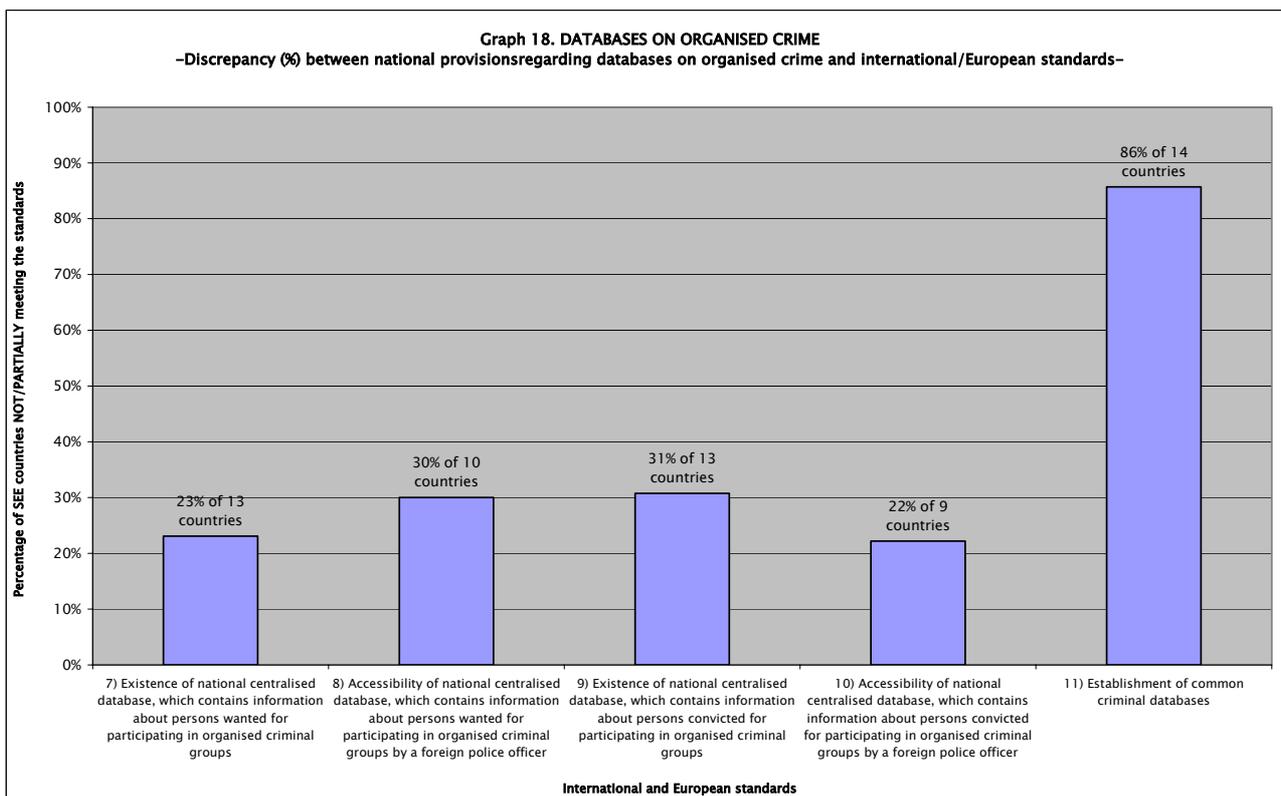
This lengthiness may be due to the technical and organisational problems listed under the two previous findings.

9.4.2. DATABASES ON ORGANISED CRIME

Graph 18 illustrates the level of discrepancy between national provisions regarding the establishment and accessibility of databases on organised crime and the international and European standards. The percentage of discrepancy is calculated on the number of SEE countries, which do not meet or only partially meet the standards (where 0%=ALL the SEE countries fully adhere to the standard; 100%=NONE of the SEE countries fully adhere to the standard).

When data on the specific standard are not available for one or more SEE countries (i.e. no answer is provided or the standard is not applicable), the percentage is calculated on the number of the countries, for which data are available. The number of responding countries is duly acknowledged in the related columns to the right of the percentage.

The detailed results per country are presented in Synoptic Table 4 at the end of paragraph 9.4.



Finding 37. Presence and accessibility of national centralised databases containing information on organised crime

In all the SEE countries but three (Bosnia–Herzegovina, Moldova and FYRoM) there are national centralised databases, which contain information about persons *wanted* for participating in OC groups. They usually contain information about persons wanted for all kinds of crime, including participation in organised criminal groups.

These databases are usually accessible by foreign police officers. Only Albanian and Romanian databases are not directly accessible. In the first case a special authorisation from high ranking officials in the Ministry of Public Order is needed.

Quite similar are the findings related to national centralised databases, which contain information about persons *convicted* for participating in OC groups and are present in all SEE countries but Albania, Bosnia–Herzegovina and Slovenia. They usually contain information about persons *convicted* for all kinds of crime, including participation in organised criminal groups.

These databases are usually accessible by foreign police officers. Only Romanian and Moldavian databases are not accessible.

It should be mentioned however that direct access to these databases is very rare and formal requests, or the intervention of Interpol, are required.

Finding 38. The lack of common criminal databases on organised crime

Unlike national databases, common criminal databases are rarer. In fact, they are present only in two countries (Poland and Turkey).

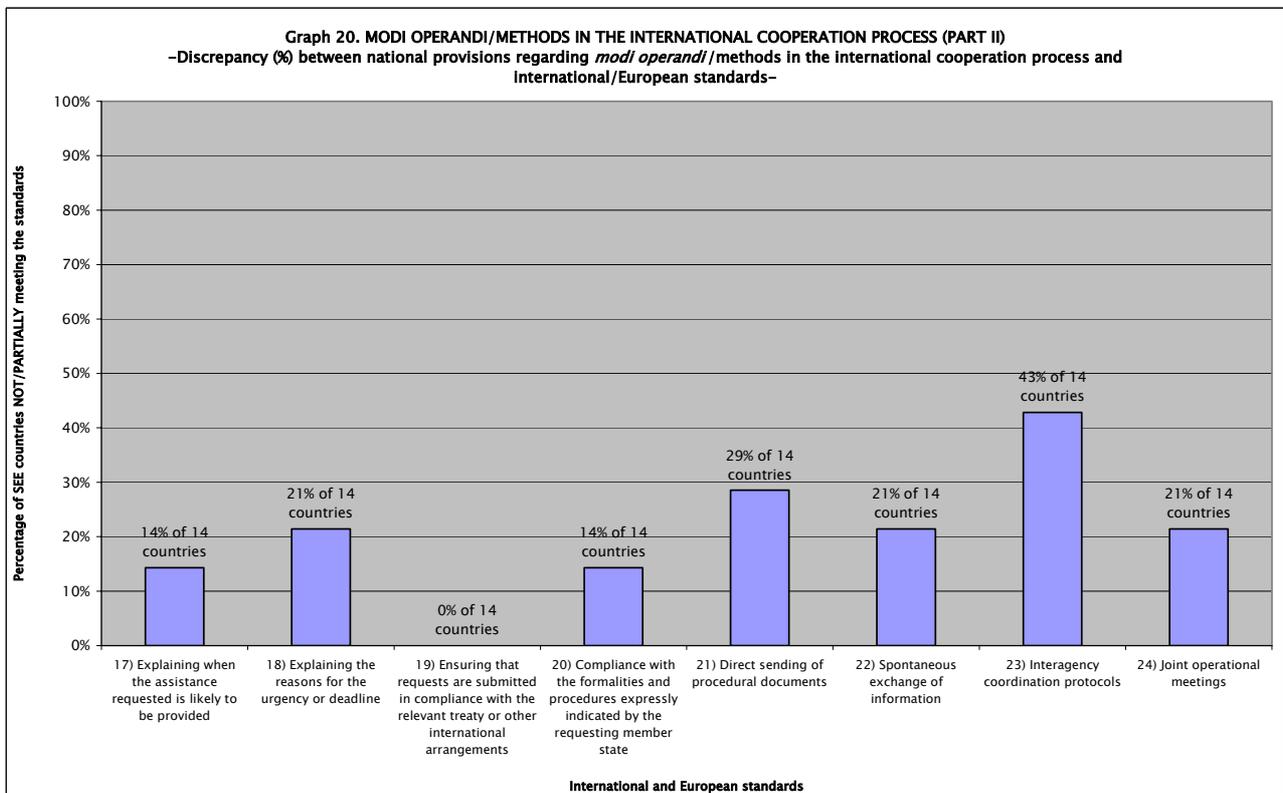
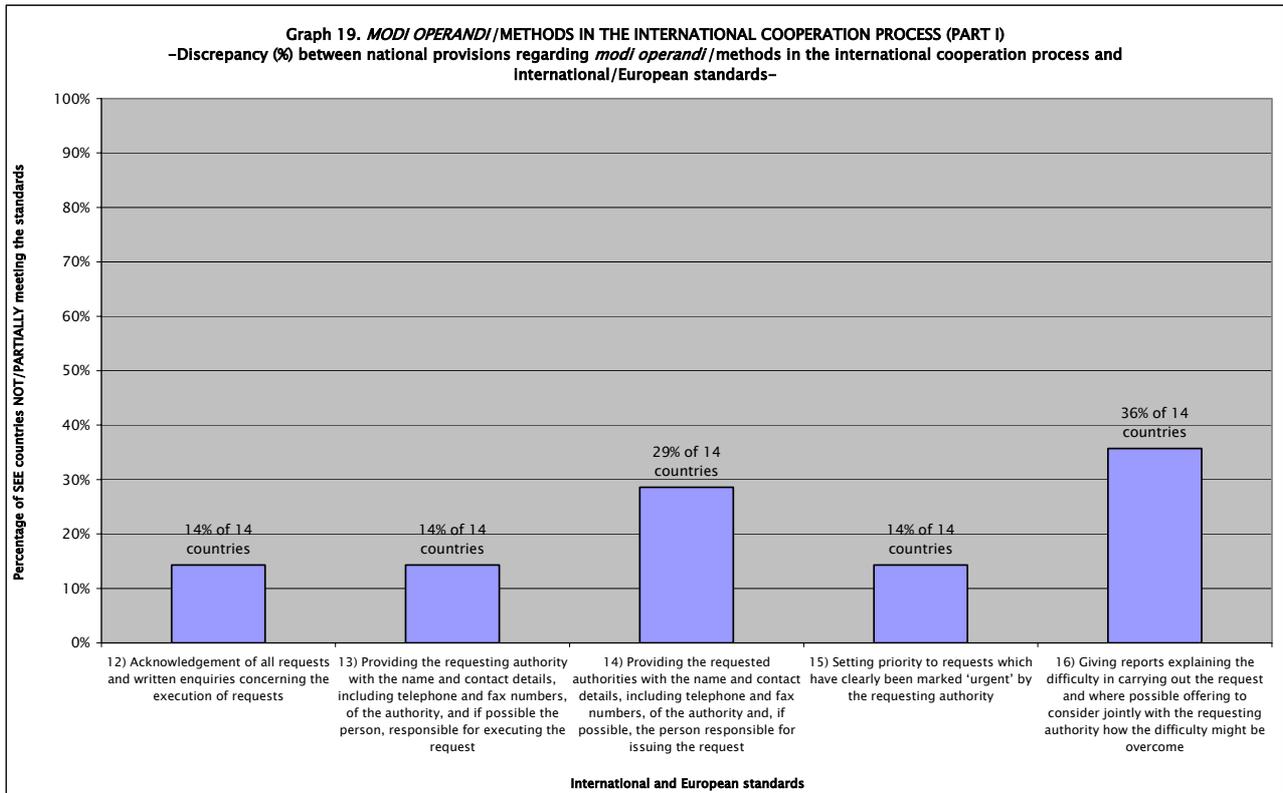
The Turkish ‘International Urgent Intervention System’ is particularly interesting. It is a practice of cooperation that has shown good results in terms of rapidity and security in the exchange of data. It is based on a computerised communication network and has been actively operating between the police forces of Turkey and Bulgaria, Georgia, Albania, Azerbaijan, Ukraine, Romania and Jordan. Using this centralised system, sounds, photographs, fingerprints and statement document files can be exchanged in a rapid and secure fashion.

9.4.3. *MODI OPERANDI*/METHODS IN THE INTERNATIONAL COOPERATION PROCESS

Graphs 19 and 20 illustrate the level of discrepancy between national provisions regarding *modi operandi*/methods in the international cooperation process and the international and European standards. The percentage of discrepancy is calculated on the number of SEE countries, which do not meet or only partially meet the standards (where 0%=ALL the SEE countries fully adhere to the standard; 100%=NONE of the SEE countries are fully adhere to the standard).

When data on the specific standard are not available for one or more SEE countries (i.e. no answer is provided or the standard is not applicable), the percentage is calculated on the number of the countries, for which data are available. The number of responding countries is duly acknowledged in the related columns to the right of the percentage.

The detailed results per country are presented in Synoptic Table 4 at the end of paragraph 9.4.



Finding 39. The common adoption of practical methods to smooth the international cooperation process

All SEE countries have adopted various practical techniques to overcome the obstacles to the international cooperation process. Among the most commonly (i.e. in 10 or more than 10 countries) adopted methods there are:

- ensuring that requests are submitted in compliance with the relevant treaty or other international arrangements;
- acknowledgement of all requests and written enquiries concerning the execution of requests;
- providing the *requesting* authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing the request;
- setting priority to requests which have clearly been marked 'urgent' by the requesting authority;
- explaining when the assistance requested is likely to be provided;
- compliance with the formalities and procedures expressly indicated by the requesting member state;
- providing the *requested* authorities with the name and contact details, including telephone and fax numbers, of the authority and, if possible, the person responsible for issuing the request;
- explaining the reasons for the urgency or deadline;
- direct sending of procedural documents;
- spontaneous exchange of information;
- joint operational meetings.

Finding 40. The partial lack of interagency coordination protocols

Despite the positive experience of the countries that have adopted interagency coordination protocols, six SEE countries have not adopted them.

They consist in agreements facilitating cooperation and sharing of data among the different national agencies involved in the cooperation process (e.g. police, judiciary, customs, frontier guards, and so on), which is essential for having a complete picture of OC for a given country to communicate to the foreign counterparts. In some SEE countries these protocols have led to the creation of 'National Focal Points'.

In Hungary, for instance, the International Law Enforcement Cooperation Centre (ILECC) represents a useful reference point for foreign police officers, customs officers and public prosecutors investigating transnational organised crime cases in Hungary, because its structure encompasses representatives from all the relevant agencies in Hungary. The ILECC is an example of how to build a National Focal Point for interagency cooperation and international cooperation in Criminal Matters. This organisation is very useful in cases of international cooperation in criminal matters,

because before its establishment the process of exchanging information with other foreign agencies was lengthy as it passed only through rogatory letters. Now the ILECC provides very important information (e.g. ownership/ existence of companies, criminal records of individuals, registered stolen vehicles and other items) with much faster procedures and the law states that the information can be used in court proceedings.

SYNOPTIC TABLE 4. POLICE AND JUDICIAL COOPERATION (GOOD PRACTICES)

AREA 1. Structures set up for international cooperation purposes														
	ALB	BIH	BUL	CRO	CZE	HUN	MOL	POL	ROM	SER	SLOVA	SLOVE	FYROM	TUR
1) Existence of a department/unit uniquely devoted to managing requests for international cooperation at a national level for prosecutors/investigating judges	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2) Existence of a department/unit uniquely devoted to managing requests for international cooperation at a national level for police officers	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-	Yes	Yes	Yes	Yes
3) Ready availability of translators who can translate a request for cooperation into the language of the requested State	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4) Presence of technically advanced means (email or fax) to send requests for cooperation to other countries	Yes	Yes	Yes	Yes	Yes	Yes	Partial (fax only)	No	Yes	No	Partial (fax only)	Yes	No	Yes
5) Existence of a national standard form, which prosecutors/investigating judges use in order to ask for international assistance	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No	No	No	No	-
6) Length of the procedure to get an answer to an assistance request made to a foreign State	More than two months	From 5 to 30 days	Up to one week	More than two months	Up to three weeks	More than two months	More than two months	More than two months	Up to two weeks	Up to two months	Up to two months	Up to two months	More than two months	Up to two months

LEGENDA:

n.a. = not applicable; - = not answered; Possible answers: YES/NO/PARTIAL; Replies to n. 3-6 concern only judicial cooperation, except for BiH, where replies to n. 3-6 concern only police cooperation

AREA 2. Technological means														
	ALB	BIH	BUL	CRO	CZE	HUN	MOL	POL	ROM	SER	SLOVA	SLOVE	FYROM	TUR
7) Existence of national centralised database, which contains information about persons wanted for participating in organised criminal groups	Yes	Partial	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	-	Yes	No	Yes
8) Accessibility to foreign police officers of a national centralised database, which contains information about persons wanted for participating in organised criminal groups	Partial	Partial	Yes	No	Yes	Yes	n.a.	Yes	No	Yes	-	Yes	n.a.	Yes
9) Existence of a national centralised database, which contains information about persons convicted of participating in organised criminal groups	No	Partial	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	-	No	Yes	Yes
10) Accessibility to foreign police officers of a national centralised database, which contains information about persons convicted for participating in organised criminal groups	n.a.	Partial	Yes	n.a.	Yes	Yes	No	Yes	No	Yes	-	n.a.	Yes	Yes
11) Establishment of common criminal databases	No	Partial	No	No	No	No	No	Yes	No	No	No	No	No	Yes

LEGENDA:

n.a. = not applicable

- = not answered

Possible answers: YES/NO/PARTIAL

AREA 3. <i>Modi operandi</i> /methods in the international cooperation process														
	ALB	BIH	BUL	CRO	CZE	HUN	MOL	POL	ROM	SER	SLOVA	SLOVE	FYROM	TUR
12) Acknowledgement of all requests and written enquiries concerning the execution of requests	Yes	Yes	No	Yes	Yes	No	Yes							
13) Providing the <i>requesting</i> authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing the request	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes
14) Providing the <i>requested</i> authorities with the name and contact details, including telephone and fax numbers, of the authority and, if possible, the person responsible for issuing the request	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	No	No	No	Yes
15) Setting priority to requests which have clearly been marked 'urgent' by the requesting authority	Yes	No	Yes	No	Yes	Yes								
16) Provision of reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authority how the difficulty might be overcome	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	No	No	No	No	Yes
17) Explanation of when the assistance requested is likely to be provided	Yes	Yes	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
18) Explanation of the reasons for the urgency or deadline	Yes	No	No	No	Yes	Yes								

	ALB	BIH	BUL	CRO	CZE	HUN	MOL	POL	ROM	SER	SLOVA	SLOVE	FYROM	TUR
19) Ensuring that requests are submitted in compliance with the relevant treaty or other international arrangements	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes						
20) Compliance with the formalities and procedures expressly indicated by the requesting member state	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes
21) Direct sending of procedural documents	Yes	Yes	No	No	No	No	Yes	No	Yes	No	No	No	Yes	Yes
22) Spontaneous exchange of information	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes
23) Interagency coordination protocols	No	Yes	No	No	No	Yes	Yes	No	No	No	No	No	Yes	Yes
24) Joint operational meetings	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	No	Yes	Yes

LEGENDA:

n.a. = not applicable

- = not answered

Possible answers: YES/NO/PARTIAL

10.

CONCLUSIONS AND RECOMMENDATIONS

This section provides an overview of the conclusions (paragraph 10.1.) and related recommendations (paragraph 10.2.) of this study from a general (regional) perspective. This choice allows an immediate understanding of the policy implications of this study for international actors, and in particular for the organisations and institutions (e.g. the European Union Commission, the Stability Pact, the Council of Europe, Interpol, Europol, SECI Center, etc.), which might contribute to the enhancement of international police and judicial cooperation against organised crime in the Region.

The specific conclusions and recommendations related to each SEE country can be found in last two paragraphs (4. and 5.) of each country profile, where they are described in detail. These recommendations are directed at the national authorities of the SEE countries (e.g. Ministries of Justice, Ministries of the Interior, other police and judicial authorities, etc.), which might find it appropriate to follow them in order to strengthen their capacity for cooperation.

10.1. CONCLUSIONS

The analysis conducted in the previous section allows the following conclusions to be drawn which respond to the main questions underlying the first two objectives set out at the beginning of this study:

1. *What is the present organised crime situation in the SEE countries, with reference to the main features and the activities of the organised criminal groups?*
2. *How does (and does not) international police and judicial cooperation against organized crime function in the SEE countries, with reference to legislation, practices and good practices of international police and judicial cooperation?*

10.1.1. THE ORGANISED CRIME SITUATION

Conclusion n. 1. Extent and variety of OC groups and activities. OC groups are widespread in SEE countries. They have very diversified structures (not only hierarchical, but also more flexible and may be horizontal or project-based) and cooperate in building networks to carry out criminal activities. Trafficking in human beings, money laundering, and drug trafficking are among the most pervasive criminal activities in the SEE countries.

Conclusion n. 2. G-localisation of OC. OC in SEE countries is 'g-local' (i.e. both a local reality deeply entrenched in the economic-state structure, and globalised/transnational, which, like modern enterprises, develop contacts with foreign states to develop and exploit new opportunities). This conclusion is clear in three research fields: geographic scope, composition and activities of OC groups.

Conclusion n. 3. Infiltration of OC into the legitimate economy. OC groups infiltrate the legitimate economy and in particular the following sectors: nightlife services, real estate, the financial sector, tourism, casinos, procurement, construction and the legal professions. In this endeavour OC groups utilize legal entities as shields and as a way to reinvest illicit profits.

10.1.2. THE LEGISLATION ON INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANISED CRIME

Conclusion n. 4. Lack of harmonization of criminal law and procedure. The process of the ratification of international and European instruments against TOC is growing in all SEE countries, but there is still a lack of harmonisation related to criminal definitions (particularly with regard to money laundering, trafficking in human beings, participation in an OC group, and liability of legal entities) and criminal procedural instruments (particularly with regards to witness protection and seizure/confiscation provisions).

Conclusion n. 5. Lack of data protection rules. The 1981 COE Convention on data protection has not been ratified and relative rules (e.g. on supervisory authorities dealing with the protection of data and on regulations to transfer personal data) have not been fully adopted in half the SEE countries. Furthermore, half of the SEE countries do not have agreements with Europol for the safe reciprocal transmission of data, and a more than a third of SEE countries have not made any bilateral/multilateral agreements of this kind in the framework of police and judicial cooperation.

Conclusion n. 6. Preference accorded to the multilateral approach in the conclusion of agreements of cooperation. Multilateral instruments for police and judicial cooperation have been ratified and used, while bilateral instruments are not so widespread, even though, where present, they are used almost as much as multinational agreements.

10.1.3. THE PRACTICES OF INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANISED CRIME

Conclusion n. 7. Lack of operative instruments for direct cooperation. There are many legal possibilities for direct police and judicial cooperation in exchanging data, but practitioners are not fully aware of their usefulness and there are few operative instruments. In particular, liaison magistrates are absent in almost all the SEE countries and there are various practical problems related to the lack of technology, lack of training and language difficulties.

Conclusion n. 8. International and regional organisations: the wide presence of Interpol and the good level of operational usefulness of the SECI Center. Interpol is the only organisation for police cooperation present in all the SEE countries, due to the lack of agreements,

or even operative cooperation protocols, with other organisations (Europol, EJM, SECI Center) dealing with police and judicial cooperation. However, where present, the SECI Center has been assessed as the organisation, which furnishes the highest level of police cooperation to the countries where it operates and it is sometimes nominated by the experts interviewed as a 'good practice'. The degree of cooperation between Interpol and the SEE countries is considered to be medium-high, but it is still weak in some areas of assistance. The same can be said, where present, for the other organisations.

10.1.4. THE GOOD PRACTICES OF INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANISED CRIME

Conclusion n. 9. Structures set up for international cooperation purposes. Central authorities with specialised units are present in all the SEE countries, but the procedures to get a response to a request for assistance takes a very long time (more than two months in six countries and up to two months in the other four). This is also because fast means of communication are not present in five countries and standardised forms to request assistance are present in only half the countries.

Conclusion n. 10. Partial absence of national and common databases on OC. Common criminal databases on organised crime are present only in 2 countries and national centralised databases are not always present nor, when present, accessible to foreign officers. Even when they are accessible, very often direct access is not available and formal requests or the intervention of Interpol are required. A notable exception to this trend is the Turkish 'International Urgent Intervention System', which is a good practice of cooperation that has shown good results in terms of rapidity and security in the exchange of data.

Conclusion n. 11. Gaps in modi operandi/methods to smooth the international cooperation process. Most SEE countries do not yet adopt some of the good practices of police and judicial cooperation, which are essential to smooth the process of exchanging data and carrying out assistance requests. One of the more important problems is the lack of interagency coordination protocols. They consist in agreements facilitating cooperation and sharing of data among the different national agencies involved in the cooperation process (e.g. police, judiciary, customs, frontier guard, and so on), which is essential for having a complete picture of OC in a given country to communicate to the foreign counterparts. In some SEE countries these protocols led to the creation of 'National Focal Points'. The experience of the Hungarian International Law Enforcement Cooperation Centre (ILECC) represents an example of the usefulness of these institutions.

10.1.2. RECOMMENDATIONS

This paragraph responds to the third question set out at the beginning of this Study:

3. What recommendations could be developed in order to strengthen police and judicial cooperation against organized crime in cross border criminal investigations involving the SEE countries?

The following recommendations were elaborated as a direct result of the analysis conducted in the previous section. They arise from the obstacles to international police and judicial cooperation identified in the preceding sections:

RECOMMENDATION N. 1

'HARMONISING CRIMINAL LAW DEFINITIONS AND CRIMINAL PROCEDURE INSTRUMENTS'

In view of Conclusion n. 1–2 (on the extent and ramifications of OC networks in SEE countries and on types of activities that are most pervasive) and in view of Conclusion n. 4 (on the lack of harmonization of criminal law and procedure instruments against TOC), action should be taken to: (a) harmonise criminal law definitions regarding participation in an OC group, money laundering and trafficking in human beings, which are still not aligned with the Palermo Convention in some countries, (b) fully enact basic witness protection provisions, which are still not operative in 5 states, and (c) enhance special means of investigation capabilities.

In view of Conclusion n. 3 (on OC infiltration of the legitimate economy through legal persons) and of Conclusion n. 4 (specifically on the absence of corporate liability and of a harmonised confiscation system in most SEE countries), action should be taken to establish forms of administrative, civil or criminal liability, and close the gaps currently present in the confiscation systems.

Possible technical assistance proposals are:

- legislative drafting workshops on criminal law definitions on OC and criminal procedure instruments against OC;
- transfer of IT solutions and equipment to permit videoconferences for witness testimonies during trials on OC;
- transfer of IT solutions, know-how and equipment to enhance special means of investigation;
- institution of a clearing house collecting legislative developments in the SEE countries.

RECOMMENDATION N. 2

'IMPROVING DATA PROTECTION REGIME'

In view of Conclusion n. 5 (on the gaps in data protection rules), action should be taken to promote the ratification of the 1981 COE Convention on data protection and to develop agreements, or operative cooperation protocols, with Europol and other countries for the reciprocal safe transmission of data.

Possible technical assistance proposals are:

- legislative drafting workshop on data protection rules and 1981 COE Convention;
- round table technical meeting with Europol representatives to reach agreements on rules for the reciprocal safe exchange of data;
- round table technical meeting with SEE countries representatives to reach bilateral agreements in the context of police and judicial cooperation on rules for the reciprocal safe exchange of data;
- support for creating better supervisory authorities to deal with data protection.

RECOMMENDATION N. 3

'ENDORISING BILATERAL COOPERATION AGREEMENTS'

In the view of Conclusion n. 6 (on the limited adoption and use of bilateral instruments of cooperation), action should be taken to promote the adoption of bilateral instruments for police and judicial cooperation at least among the states most involved in the trafficking routes emerging from the OC analysis.

Possible technical assistance proposals are:

- round table technical meeting with all SEE countries to review existing bilateral agreements;
- bilateral meetings between countries which miss bilateral agreements or need to refine the existing ones in order to facilitate bilateral cooperation among the SEE countries.

RECOMMENDATION N. 4

'SOLVING PRACTICAL PROBLEMS REGARDING DIRECT COOPERATION'

In view of Conclusion n. 7 (on the lack of liaison magistrates posted by SEE countries and on the other obstacles to direct cooperation and exchange of information) and of Conclusion n. 9 (on the lengthiness of procedures to get assistance through central authorities) action should be taken to reinforce figures, such as liaison magistrates, to promote this type of cooperation and to solve the practical problems that prejudice direct cooperation (lack of technology, lack of training and language difficulties).

Possible technical assistance proposals are:

- awareness raising initiatives to improve knowledge of international cooperation and exchange of information possibilities;
- financial and logistic support for the establishment of liaison magistrates in countries whose police and judicial cooperation is most needed;
- transfer of expertise (training on international and regional cooperation for investigations into TOC for middle-management level police officers and prosecutors);
- transfer of equipment (IT solutions for intranet – computer networks and mailbox systems);
- transfer of knowledge for the institution of an independent translation service readily available to prosecutors/officers investigating TOC.

RECOMMENDATION N. 5.

'PROMOTING COOPERATION WITH INTERPOL, SECI CENTER, EUROPOL, EUROJUST AND EJN'

In view of Conclusion n. 8 (on the cooperation process between SEE countries and international and regional organizations devoted to police and judicial cooperation) action should be taken to reinforce the role of Interpol Europol, Eurojust, SECI Center and EJN in the areas where weaknesses have been highlighted.

Possible technical assistance proposals are:

- round table meeting between the representatives of the SEE countries concerned and international and regional organizations to discuss current obstacles to data exchange with SEE countries and establish operational protocols of cooperation in order to overcome them;
- establishment of a coordination protocol between Europol and the SECI Center in order to promote collaboration between these two organisations and develop their peculiar advantages (i.e. legal expertise of Europol and operative capacity of SECI Center).

RECOMMENDATION N. 6

'SMOOTHING THE WORK OF NATIONAL CENTRAL AUTHORITIES MANAGING INTERNATIONAL COOPERATION REQUESTS'

In view of Conclusion n. 9 (on the lengthiness of assistance procedures through central authorities, on the inadequacy of technological equipment and *modi operandi*), action should be taken to technically improve the means of communication used by central authorities and promote the adoption of standardised forms to request assistance.

Possible technical assistance proposals are:

- establishment of a dedicated translation service;
- transfer of equipment (IT solutions for sending/receiving assistance requests);
- transfer of expertise (standardisation of forms for international assistance requests).

RECOMMENDATION 7.

'ESTABLISHING COMMON CRIMINAL DATABASES AND EASING ACCESS TO NATIONAL ONES'

In view of Conclusion n. 10 (on the lack of common criminal databases and on difficult access to centralised national databases by foreign officers), action should be taken to establish common criminal databases and to make national databases readily and directly available to officers, especially in TOC cases.

Possible technical assistance proposals are:

- transfer of expertise and IT solutions to upgrade the existing national criminal databases and to make them accessible, with appropriate authorisations, to foreign officers;
- technical and knowledge support for the establishment of a common criminal database on OC to be accessed by all SEE countries;
- feasibility study on the transferability to the other SEE countries of the experience of the Turkish 'International Urgent Intervention System'.

RECOMMENDATION 8.

'ENHANCING INTERNATIONAL COOPERATION THROUGH GOOD PRACTICES'

In view of Conclusion n. 11 (on the limited adoption of techniques to smooth the cooperation process), action should be taken to promote the use of good practices, which have been shown to speed up cooperation procedures.

Possible technical assistance proposals are:

- workshops for high level managers of central cooperation authorities and prosecutors/police officers on how to develop methods to smooth cooperation procedures;
- establishment of national focal points for cooperation in order to fill the gap left by the lack of interagency coordination protocols;
- feasibility study on the transferability to the other SEE countries of the experience of International Law Enforcement Cooperation Centre (ILECC).

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ANNEX 1**METHODOLOGICAL APPENDIX**

METHODOLOGICAL TABLE 1. LIST OF THE VARIABLES RELEVANT TO ANALISE THE ORGANISED CRIME SITUATION IN SEE COUNTRIES AND RELATIVE QUESTIONS

AREA 1. Organised criminal groups features		
Variables	Questions	Possible Answers
1) Number of groups present in the country	How many organised criminal groups operate in your country?	1-10
		10-20
		20-30
		30-40
		40-50
		More than 50
2) Average number of participants in each group	How many members do those criminal groups have on average?	3-10
		10-20
		20-30
		30-40
		40-50
		More than 50
3) Structure of the groups	How would you define the structure of the criminal groups operating in your country?	HI/HO/PR
4) Existence of groups made up exclusively of nationals?	Are there groups made up exclusively of nationals?	YES/NO
5) Existence of groups made up of nationals and non-nationals?	Are there groups made up of nationals and non-nationals?	YES/NO
6) Existence of groups made up exclusively of non-nationals?	Are there groups made up exclusively of non-nationals?	YES/NO
7) Cooperation between groups made up of nationals with groups made up of non-nationals	Is there cooperation between groups made up of nationals with groups made up of non-nationals	YES/NO

LEGENDA: HI = mostly hierarchical; HO = mostly horizontal; PR = mostly on a project basis

AREA 2. Activities of organised criminal groups		
Variables	Questions	Possible Answers
8) Activities committed	In which activities organised criminal groups are involved?	Armed robbery, Bank fraud, Child pornography, Computer crimes, Drug producing, Drug trafficking, Environmental crime (e.g. illicit waste disposal), Explosives (illegal traffic), Forgery, Fraud, Gambling (illegal schemes), Homicide, Illegal activities surrounding prostitution, Insurance scams, Intellectual property infringements (including counterfeiting, trade-mark and patent infringements), Kidnapping for ransom, Loan sharking/Usury, Money laundering, Production and sale of pirate audio CDs and software, Racketeering, Smuggling of cigarettes, Smuggling of cultural artefacts, Smuggling of endangered species, Smuggling of petrol, Trafficking in human beings, Trafficking of human organs, Trafficking of nuclear material, Trafficking of weapons, Vehicle theft, Vehicle trafficking, Other
9) Geographic scope of groups' activities	Do the groups operate mainly on a national scale or on a transnational scale?	N, T, N/T
10) Cooperation with groups based abroad in carrying out TOC activities	Do the organised criminal groups cooperate with groups based abroad?	YES/NO
11) Infiltration of groups in the legitimate economy	If organised criminal groups infiltrate the legitimate economy, which sectors seem at greatest risk of infiltration?	Real estate, Construction, Financial, Tourism, Waste disposal, Procurement, Casinos, Nightlife services, Legal profession, Other

LEGENDA: N = activities are committed mainly within the country; T = activities are committed mainly in more than one country; N/T = activities are committed equally within the country and in one or more other countries

METHODOLOGICAL TABLE 2. LIST OF THE INTERNATIONAL AND EUROPEAN STANDARDS ON INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANISED CRIME AND LIST OF THE QUESTIONS AIMED AT ASSESSING THE DISCREPANCY BETWEEN NATIONAL LEGISLATION AND THE SELECTED STANDARDS

AREA 1. Criminal law		
International and European standards	Questions	Possible Answers
1) Existence of legal provisions criminalizing organized criminal groups in accordance with art. 5 of the UN 2000 Convention	Do legal provisions exist criminalizing organized criminal groups in accordance with art. 5 of the UN 2000 Convention?	Yes/No/Partial
2) Existence of a legal provisions criminalizing money laundering in accordance with art. 6, UN 2000 Convention and art. 6, COE 1990 Convention	Do legal provisions exist criminalizing money laundering in accordance with art. 6, UN 2000 Convention and art. 6, COE 1990 Convention?	Yes/No/Partial
3) Existence of a legal provisions criminalizing drug trafficking in accordance with art. 3, UN 1988 Convention	Do legal provisions exist criminalizing drug trafficking in accordance with art. 3, UN 1988 Convention?	Yes/No/Partial
4) Existence of a legal provisions criminalizing trafficking in persons in accordance with art. 3 and 5, Protocol on Trafficking in Persons of the UN 2000 Convention	Do legal provisions exist criminalizing trafficking in persons in accordance with art. 3 and 5, Protocol on Trafficking in Persons of the UN 2000 Convention?	Yes/No/Partial
5) Existence of a civil, criminal or administrative liability for legal persons in accordance with art. 10, UN 2000 Convention and art. 18, COE 1999 Convention	Do legal provisions exist providing for a civil, criminal or administrative liability of legal persons in accordance with art. 10, UN 2000 Convention and art. 18, COE 1999 Convention?	Yes/No/Partial
AREA 2. Criminal procedure		
International and European legal standards	Questions	Possible Answers
6) Existence of a witness protection legislation in accordance with art. 24–25, UN 2000 Convention, art. 22, COE 1999 Convention, and art. 23, II Protocol, COE 1959 Convention	Do legal provisions exist providing witness protection in accordance with art. 24–25, UN 2000 Convention, art. 22, COE 1999 Convention, and art. 23, II Protocol, COE 1959 Convention?	Yes/No/Partial
7) Existence of national seizure and confiscation provisions in accordance with art. 12–13, UN 2000 Convention and art. 2, 13–16, COE 1990 Convention	Do legal provisions exist providing seizure and confiscation in accordance with art. 12–13, UN 2000 Convention and art. 2, 13–16, COE 1990 Convention?	Yes/No/Partial
8) Existence of special means of investigations in accordance with art. 20, UN 2000 Convention, art. 11, UN 1988 Convention, art. 4, COE 1990 Convention, and art. 18–19, II Protocol to the COE 1959 Convention	Do special means of investigations exist in accordance with art. 20, UN 2000 Convention, art. 11, UN 1988 Convention, art. 4, COE 1990 Convention, art. 18–19, II Protocol to the COE 1959 Convention	Yes/No/Partial

AREA 3. Data protection rules		
International and European legal standards	Questions	Possible Answers
9) Ratification of the COE 1981 Convention	Did your country ratify the COE 1981 Convention?	Yes/No
10) Existence of bilateral or multilateral agreements within the framework of police and judicial cooperation containing provisions to protect personal data	Do bilateral or multilateral agreements exist within the framework of police and judicial cooperation containing provisions to protect personal data	Yes/No
11) Existence of a national legislation on the personal data protection	Does a national legislation on the protection of personal data exist in your country?	Yes/No
12) Applicability of personal data protection legislation to enforcement agencies	Is the personal data protection legislation applicable to enforcement agencies?	Yes/No
13) Applicability of personal data protection legislation to prosecution offices	Is the personal data protection legislation applicable to prosecution offices?	Yes/No
14) Existence of agreements with Europol regarding reciprocal transmission of personal data	Do agreements exist with Europol regarding reciprocal transmission of personal data	Yes/No
15) Existence of a supervisory authority dealing with the protection of personal data	Is there a supervisory authority dealing with the protection of personal data?	Yes/No
16) Independence of the supervisory authority dealing with the protection of personal data	Is the supervisory authority dealing with the protection of personal data independent?	Yes/No
17) Existence of a regulation on transfer of personal data to countries which are not party to the 1981 COE Convention	Does a regulation on transfer of personal data to countries which are not party to the 1981 COE Convention exist?	Yes/No
18) Existence of security measures to protect personal data (i.e. any technical and organisational device, which is designed to ensure a level of security appropriate to the risk implied in the processing of data and the nature of data to be protected)	Do security measures (i.e. any technical and organisational device, which is designed to ensure a level of security appropriate to the risk implied in the processing of data and the nature of data to be protected) exist to protect personal data?	Yes/No
19) Existence of person ultimately responsible of the treatment of personal data	Is there a person ultimately responsible of the treatment of personal data?	Yes/No
AREA 4. Multilateral and bilateral agreements		
International and European legal standards	Questions	Possible answers
20) Ratification of 1957 COE Convention	Did your country ratify the 1957 COE Convention	Yes/No
21) Ratification of 1975 COE Protocol	Did your country ratify the 1975 COE Protocol	Yes/No
22) Ratification of 1978a COE Protocol	Did your country ratify the 1978a COE Protocol	Yes/No
23) Ratification of 1959 COE Convention	Did your country ratify the 1959 COE Convention	Yes/No
24) Ratification of 1978b COE Protocol	Did your country ratify the 1978b COE Protocol	Yes/No
25) Existence of bilateral agreements for judicial cooperation with all neighbouring countries	Did your country signed bilateral agreements for judicial cooperation with all neighbouring	Yes/No

	countries	
26) Existence of bilateral agreements for police cooperation with all neighbouring countries	Did your country signed bilateral agreements for police cooperation with all neighbouring countries	Yes/No
AREA 5. Direct channels of police and judicial cooperation		
International and European legal standards	Questions	Possible answers
27) Existence for a prosecutor/investigating judge of an obligation for a prosecutor/investigating judge to forward requests of assistance to competent colleagues	Does an obligation to forward requests of assistance to competent colleagues exist for a prosecutor/investigating judge?	Yes/No
28) Existence of an obligation for a prosecutor/investigating judge to summon witnesses and experts for foreign colleagues	Does an obligation to summon witnesses and experts for foreign colleagues exist for a prosecutor/investigating judge?	Yes/No
29) Existence of an obligation for a prosecutor/investigating judge to execute search warrants	Does an obligation to execute search warrants exists for a prosecutor/investigating judge?	Yes/No
30) Existence of an obligation for a prosecutor/investigating judge to execute ordinary and special means of investigations	Does an obligation to execute ordinary and special means of investigations exists for a prosecutor/investigating judge?	Yes/No
31) Existence of an obligation for a prosecutor/investigating judge to execute freezing and confiscation orders	Does an obligation to execute freezing and confiscation orders exist for a prosecutor/investigating judge?	Yes/No
32) Existence of an obligation for a prosecutor/investigating judge to transmit bank records	Does an obligation to transmit bank records exist for a prosecutor/investigating judge?	Yes/No
33) Existence of an obligation for a prosecutor/investigating judge to transmit criminal records	Does an obligation to transmit criminal records exists for a prosecutor/investigating judge?	Yes/No
34) Existence of liaison magistrates	Are liaison magistrates posted in foreign countries?	Yes/No
35) Existence of an obligation for a police officer to forward requests of assistance to competent colleagues	Does an obligation to forward requests of assistance to competent colleagues exist for police officers?	Yes/No
36) Existence of an obligation for a police officer to forward information on TOC rings, which can be useful to foreign colleagues	Does an obligation to forward information on TOC rings, which can be useful to foreign colleagues, exist for police officers?	Yes/No
37) Existence of the legal possibility for a police officer to directly send bank records if requested so by a foreign counterpart colleague	Can police officers directly send bank records, if requested so by a foreign counterpart colleague?	Yes/No
38) Existence of the legal possibility for a police officer to directly send phone records if requested so by a foreign counterpart	Can police officers directly send phone records, if requested so by a foreign counterpart colleague?	Yes/No

colleague		
39) Existence of the legal possibility for a police officer to directly send documents related to criminal records if requested so by a foreign counterpart colleague	Can police officers directly send documents related to criminal records, if requested so by a foreign counterpart colleague?	Yes/No
40) Existence of the legal possibility for a police officer to directly send documents related to vehicle ownership if requested so by a foreign counterpart colleague	Can police officers directly send documents related to vehicle ownership, if requested so by a foreign counterpart colleague	Yes/No
41) Existence of liaison officers posted to foreign countries	Are liaison officers posted to foreign countries?	Yes/No
42) Existence of joint investigation teams with foreign countries	Are joint investigation teams with foreign countries carried out?	Yes/No
43) Existence of international joint customs surveillance operations	Are international joint customs surveillance operations carried out?	Yes/No
AREA 6. International and regional organisations		
International and European legal standards	Questions	Possible answers
44) Existence of a cooperation agreement with Interpol	Does a cooperation agreement with Interpol exist?	Yes/No
45) Existence of a cooperation agreement with Europol	Does a cooperation agreement with Europol exist?	Yes/No
46) Existence of a cooperation agreement with Eurojust	Does a cooperation agreement with Eurojust exist?	Yes/No
47) Existence of a cooperation agreement with EJN	Does a cooperation agreement with EJN exist?	Yes/No
48) Existence of a cooperation agreement with SECI Center	Does a cooperation agreement with SECI Center exist?	Yes/No

METHODOLOGICAL TABLE 3. LIST OF THE FACTORS THAT SHAPE THE ENFORCEMENT OF LEGISLATION *DIRECTLY* RELEVANT TO INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANISED CRIME IN THE SEE COUNTRIES AND QUESTIONS AIMED AT ASSESSING THE LEVEL OF ENFORCEMENT OF THESE LEGISLATIVE PROVISIONS

AREA 4. Multilateral and bilateral agreements		
Factors that shape the enforcement of legislation	Questions	Possible answers
1) Frequency of use of 1957 COE Convention	How often is the 1957 COE Convention used?	A range from 0 to 3, where 0=not used; 3=often used
2) Frequency of use of 1975 COE Protocol	How often is the 1975 COE Protocol used?	A range from 0 to 3, where 0=not used; 3=often used
3) Frequency of use of 1978a COE Protocol	How often is the 1978a COE Protocol used?	A range from 0 to 3, where 0=not used; 3=often used
4) Frequency of use of 1959 COE Convention	How often is the 1959 COE Convention used?	A range from 0 to 3, where 0=not used; 3=often used
5) Frequency of use of 1978b COE Protocol	How often is the 1978b COE Protocol used?	A range from 0 to 3, where 0=not used; 3=often used
6) Frequency of use of bilateral agreements for judicial cooperation with all neighbouring countries	How often are bilateral agreements for judicial cooperation with all neighbouring countries used?	A range from 0 to 3, where 0=not used; 3=often used (average of the total)
7) Frequency of use of bilateral agreements for police cooperation with all neighbouring countries	How often are bilateral agreements for police cooperation with all neighbouring countries used?	A range from 0 to 3, where 0=not used; 3=often used (average of the total)
AREA 5. Direct channels of police and judicial cooperation		
Factors that shape the enforcement of legislation	Questions	Possible answers
8) Direct contact of police officers with police officers of other countries during the course of an investigation in the absence of a formal agreement	During the course of an investigation, do police officers enter into direct contact with police officers of other countries whether a formal agreement exists or not?	Yes/No
9) Information given to police officers informed about the possibility of being able to cooperate with police officers in other countries	Are the police officers informed of the possibility of being able to cooperate with police officers in other countries?	Yes/No
10) Level of training of police officers in investigating transnational organised crime	What is the level of training of police officers in investigating transnational organised crime?	A range from 0 to 3, where 0=no training; 3=high level of training
11) Availability of a computer network (intranet) to all police officers	Do all police officers have a computer network (intranet)?	Yes/No
12) Availability of an official e-mail account to all police officers	Do all police officers have an official e-mail account?	Yes/No
13) Degree of usefulness of liaison officers	What is the degree of usefulness of liaison officers?	A range from 0 to 3, where 0=no usefulness; 3=high usefulness

14) Degree of usefulness of joint investigative teams	What is the degree of usefulness of joint investigative teams?	A range from 0 to 3, where 0=no usefulness; 3=high usefulness
15) Degree of usefulness of international joint customs surveillance operations	What is the degree of usefulness of international joint customs surveillance operations?	A range from 0 to 3, where 0=no usefulness; 3=high usefulness
16) Direct contact of prosecutors/investigating judges with prosecutors/investigating judges of other countries during the course of an investigation in the absence of a formal agreement	During the course of an investigation, do prosecutors/investigating judges enter into direct contact with prosecutors/investigating judges of other countries whether a formal agreement exists or not?	Yes/No
17) Ready availability to prosecutors/investigating judges of translators for the official documents coming from a foreign country in answer to a cooperation request	Do prosecutors/investigating judges have translators readily available, who translate the official documents coming from a foreign country in answer to a cooperation request?	Yes/No
18) Level of training of prosecutor/investigating judge in investigating transnational organised crime	What is the level of training of prosecutor/investigating judge in investigating transnational organised crime?	A range from 0 to 3, where 0=no training; 3=high level of training
19) Availability of a computer network (intranet) to all prosecutor/investigating judges	Do all prosecutor/investigating judges have a computer network (intranet)?	Yes/No
20) Availability of an official e-mail account to all prosecutor/investigating judges	Do all prosecutor/investigating judges have an official e-mail account?	Yes/No
21) Degree of usefulness of liaison magistrates	What is the degree of usefulness of liaison magistrates?	A range from 0 to 3, where 0=no usefulness; 3=high usefulness
AREA 6. International and regional organisations		
Factors that shape the enforcement of legislation	Questions	Possible answers
22) Degree of cooperation with Interpol	What is the degree of cooperation with Interpol?	A range from 0 to 3, where 0=no cooperation; 3=high level of cooperation (calculated on the average of 10 areas of cooperation, see country profiles for details)
23) Degree of cooperation with Europol	What is the degree of cooperation with Europol?	A range from 0 to 3, where 0=no cooperation; 3=high level of cooperation (calculated on the average of 10 areas of cooperation, see country profiles for details)
24) Degree of cooperation with Eurojust	What is the degree of cooperation with Eurojust?	A range from 0 to 3, where 0=no cooperation; 3=high level of cooperation (calculated on the average of 7 areas of cooperation, see country

		profiles for details)
25) Degree of cooperation with EJN	What is the degree of cooperation with EJN?	A range from 0 to 3, where 0=no cooperation; 3=high level of cooperation (calculated on the average of 6 areas of cooperation, see country profiles for details)
26) Degree of cooperation with SECI Center	What is the degree of cooperation with SECI Center?	A range from 0 to 3, where 0=no cooperation; 3=high level of cooperation (calculated on the average of 6 areas of cooperation, see country profiles for details)

METHODOLOGICAL TABLE 4. LIST OF THE INTERNATIONAL AND EUROPEAN STANDARDS RELATED TO GOOD PRACTICES OF INTERNATIONAL POLICE AND JUDICIAL COOPERATION AGAINST ORGANISED CRIME AND LIST OF THE QUESTIONS AIMED AT ASSESSING THE DISCREPANCY BETWEEN NATIONAL GOOD PRACTICES AND THE SELECTED STANDARDS

AREA 1. Structures set up for international cooperation purposes⁷⁶³		
International and European standards	Questions	Possible answers
1) Existence of a department/unit uniquely devoted to managing requests of international cooperation at a national level for prosecutors/investigating judges	Is there a department/unit uniquely devoted to international cooperation inside the central authority?	Yes/No
2) Existence of a department/unit uniquely devoted to managing requests of international cooperation at a national level for police officers	Is there a department/unit uniquely devoted to international cooperation inside the central authority?	Yes/No
3) Ready availability of translators who can translate a request of cooperation into the language of the requested State	Are there translators readily available, who can translate a request of cooperation into the language of the requested State?	Yes/No
4) Presence of technically advanced means (email or fax) adopted to send requests of cooperation to other countries	Are technically advanced means (email or fax) adopted to send requests of cooperation to other countries?	Yes/No
5) Existence of a national standard form, which prosecutors/investigating judges use in order to ask for international assistance	Does a national standard form exist, which prosecutors/investigating judges use in order to ask for international assistance?	Yes/No
6) Length of the procedure to get an answer to an assistance request made to a foreign State	How long does it take to get an answer to an assistance request made to a foreign State?	A range from up to 1 week to more than two months
AREA 2. Databases on organised crime		
International and European standards	Questions	Possible answers
7) Existence of national centralised database, which contains information about persons wanted for participating in organised criminal groups	Do police officers in your country maintain a national centralised database, which contains information about persons wanted in your country for participating in organised criminal groups?	Yes/No
8) Accessibility of national centralised database, which contains information about persons wanted for participating in organised criminal groups by a foreign police officer	Can a foreign police officer access the information contained in the database?	Yes/No/Partial
9) Existence of national centralised database, which contains information about persons	Do police officers in your country maintain a national centralised database, which contains	Yes/No

⁷⁶³ Standards 3–6 concern only judicial cooperation.

convicted for participating in organised criminal groups	information about persons convicted in your country for participating in organised criminal groups?	
10) Accessibility of national centralised database, which contains information about persons convicted for participating in organised criminal groups by a foreign police officer	Can a foreign police officer access the information contained in the database?	Yes/No/Partial
11) Establishment of common criminal databases	Has your country established common criminal databases with other countries or other organisations?	Yes/No
AREA 3. <i>Modi operandi</i>/methods in the international cooperation process		
International and European standards	Questions	Possible answers
12) Acknowledgement of all requests and written enquiries concerning the execution of requests	Are all the requests and written enquiries concerning the execution of requests acknowledged?	Yes/No
13) Providing the <i>requesting</i> authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing the request	Do the competent authority in your country provide the <i>requesting</i> authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing the request?	Yes/No
14) Providing the <i>requested</i> authorities with the name and contact details, including telephone and fax numbers, of the authority and, if possible, the person responsible for issuing the request	Do the competent authority in your country provide the <i>requested</i> authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing the request?	Yes/No
15) Setting priority to requests which have clearly been marked 'urgent' by the requesting authority	Do the competent authority in your country set priority to requests which have clearly been marked 'urgent' by the requesting authority?	Yes/No
16) Giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authority how the difficulty might be overcome	Do the competent authority in your country give reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authority how the difficulty might be overcome?	Yes/No
17) Explaining when the assistance requested is likely to be provided	Do the competent authority in your country explain when the assistance requested is likely to be provided?	Yes/No
18) Explaining the reasons for the urgency or deadline	Do the competent authority in your country explain the reasons for the urgency or deadline?	Yes/No
19) Ensuring that requests are submitted in compliance with the relevant treaty or other international arrangements	Do the competent authority in your country ensure that requests are submitted in compliance with the relevant treaty or other international arrangements?	Yes/No
20) Compliance with the formalities and procedures expressly indicated by the	Do the competent authority in your country comply with the formalities and procedures	Yes/No

requesting member state	expressly indicated by the requesting member state?	
21) Direct sending of procedural documents	Do the competent authority in your country directly send procedural documents?	Yes/No
22) Spontaneous exchange of information	Do the competent authority in your country spontaneously exchange information?	Yes/No
23) Interagency coordination protocols	Are interagency coordination protocols set up in your country?	Yes/No
24) Joint operational meetings	Are joint operational meetings organised in your country for the purposes of international cooperation?	Yes/No

ANNEX 2.

QUESTIONNAIRES

This Annex contains the two questionnaires prepared for the development of the study. The questionnaire addressed to public officers is first presented, followed by the questionnaire for public prosecutors.

It is to be noted that the questions included in the two questionnaires were sent to the experts at different times corresponding with the phases of the research.

A) QUESTIONNAIRE FOR POLICE OFFICERS

INSTRUCTIONS FOR THE COMPILATION OF THE QUESTIONNAIRE

In view of your expertise in and knowledge of the topics dealt with, we kindly ask for your co-operation in answering this questionnaire, which has been prepared for the development of the Research Project entitled *The Contribution of Data Exchange Systems to the Fight Against Organised Crime in the SEE Countries: an Assessment*. This Project has been developed as part of the Stability Pact Initiative against organised crime in South Eastern Europe (SPOC). The Project is being carried out by TRANSCRIME, Research Centre on Transnational Crime of the University of Trento (Italy), for the Office of the Special Co-ordinator of the Stability Pact for South Eastern Europe; it is supported by the Piedmont Region (Italy), the South East European Co-operative Initiative (SECI), the Province of Turin (Italy) and the Autonomous Province of Trento (Italy).

The project's goal is to assess how information exchange systems function in the fight against organised crime in the region, and the way in which the countries involved respond to this problem. Its final objective is to improve and strengthen the process of information exchange, by encouraging the adoption of legal instruments, bilateral and multilateral agreements in addition to enhancing reciprocal knowledge of practices and capacity for co-operation.

The Stability Pact Mission begins with the assumption that organised crime '*threatens the objectives of the Stability Pact and efforts to institute the rule of law, democracy, human rights and viable social and economic order in South Eastern Europe*'. On the basis of this assumption, participants in the Stability Pact have committed themselves to developing a common strategy of preventive and control measures aimed at strengthening the fight against organised crime and related phenomena at all levels in a well co-ordinated manner, in line with European and other international standards. The framework of reference for these standards is identified in the Council of Europe's Conventions and Recommendations, in the EU *acquis* in the field of Justice and Home Affairs, as well as in the more relevant United Nations Conventions (especially the three Conventions concerning drug abuse and trafficking and the United Nations Convention on Transnational Organised Crime).

Your co-operation in the Study will be fully acknowledged in the Final Report, a copy of which will be sent to you.

This questionnaire is organised into the following 10 Sections. In view of your expertise you are kindly asked to reply to sections 1, 3, 4, 5, 6, 9 and 10.

SECTION 1. ORGANISED CRIME SITUATION. The objective of this Section is to obtain a 'picture' of the organised crime situation in the country. It is organised as follows:

- (1.1) Organised criminal groups active in the country
- (1.2) Composition of the criminal groups
- (1.3) Structure of the criminal groups
- (1.4) Geographic scope and transnational links of the organised criminal groups
- (1.5) Activities of the organised criminal groups

SECTION 2. CRIMINAL LAW. This Section aims at understanding the legal framework in the fight against organised crime. It is organised as follows:

- (2.1) Participation in a criminal association
- (2.2) Witnesses
- (2.3) Liability of legal persons
- (2.4) Seizure and confiscation of the proceeds from crime
- (2.5) Money laundering
- (2.6) Legal reforms
- (2.7) Drug trafficking
- (2.8) Trafficking in human beings

SECTION 2-BIS. CRIMINAL PROCEDURE. This Section aims at understanding the main characteristics of the criminal justice system and the potential obstacles to cooperation arising from the differences among them. It is organised as follows:

- (2-bis.1) Criminal justice system
- (2-bis.2) Search and means of evidence
- (2-bis.3) Criminal procedure and judicial cooperation

SECTION 3. LAW ENFORCEMENT. This Section aims at understanding law enforcement response to organised crime. It is organised as follows:

- (3.1) Investigative units
- (3.2) Means of investigation

SECTION 4. OBSTACLES IN INVESTIGATING ORGANISED CRIME, AND SUGGESTIONS TO OVERCOME THEM. This Section aims at understanding existing obstacles in investigating organised crime and at collecting suggestions to overcome them.

SECTION 5. ASSISTANCE IN PRE TRIAL INVESTIGATIONS OF TRANSNATIONAL ORGANISED CRIME CASES LED BY POLICE OFFICERS. This Section aims at understanding how police co-operation in transnational organised crime cases is working. It is organised as follows:

- (5.1) Sharing of information
- (5.2) Training of law enforcement agents
- (5.3) Computer equipment
- (5.4) Assistance through a national centralised authority
- (5.5) Assistance through direct contact
- (5.6) Assistance through Interpol and Europol
- (5.7) Cooperation among law enforcement agencies

SECTION 6. OBSTACLES IN POLICE ASSISTANCE RECEIVED BY YOUR COUNTRY FROM OTHER COUNTRIES, IN PRE TRIAL INVESTIGATIONS ON TRANSNATIONAL ORGANISED CRIME, AND SUGGESTIONS TO OVERCOME THEM. This Section aims at understanding existing obstacles to police assistance received by your country from other countries in pre trial investigations, and at collecting suggestions to overcome them.

SECTION 7. ASSISTANCE IN PRE TRIAL INVESTIGATIONS ON TRANSNATIONAL ORGANISED CRIME LED BY THE PROSECUTORS/INVESTIGATING JUDGES. This Section aims at understanding how co-operation among prosecutors/investigating judges is working in transnational organised crime cases. It is organised as follows:

- (7.1) National legislative framework regulating assistance
- (7.2) Training of prosecutors/investigating judges
- (7.3) Computer equipment
- (7.4) Assistance through a national centralised authority
- (7.5) Assistance through direct contact
- (7.6) Assistance through international and regional organisations

SECTION 8. OBSTACLES TO ASSISTANCE IN JUDICIAL ASSISTANCE RECEIVED BY YOUR COUNTRY FROM OTHER COUNTRIES IN PRE TRIAL INVESTIGATIONS ON TRANSNATIONAL ORGANISED CRIME, AND SUGGESTIONS TO OVERCOME THEM. This Section aims at understanding existing obstacles in judicial assistance received by your country from other countries in pre trial investigations, and at collecting suggestions to overcome them.

SECTION 9. DATA PROTECTION RULES. This Section aims at understanding how personal data are handled by prosecution offices and law enforcement agencies. It is organised as follows:

- (9.1) Legislative framework regulating the protection of personal data
- (9.2) Supervisory authority

- (9.3) Transborder flows of personal data
- (9.4) Treatment of personal data by law enforcement agencies/prosecution offices

SECTION 10. GOOD PRACTICES. This Section aims at understanding which good practices of international police and judicial cooperation are enacted. Some examples of good practices are provided in a list, but the question is semi-structured.

Please note that, with some limited exceptions, this questionnaire has been entirely drafted in a 'YES-NO' format, or with a list of possible answers, in order to allow a quick response.

We would like to remind you that the questionnaire can be filled by electronic means by double clicking on the answer(s) you wish to tick and then choose the option 'select' (a cross should automatically appear in the box).

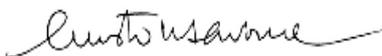
We would be grateful if you could provide us with your answer no later than on the 29th of September.

For any further inquiries and to send in your answers, please contact:

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Thanking you in advance for your kind co-operation, I remain

Yours sincerely



Ernesto U. Savona
Director of Trascrime

SECTION 1. ORGANISED CRIME SITUATION

Please note that in the context of this questionnaire, the term 'organised criminal group'⁷⁶⁴ means:

- a structured group⁷⁶⁵ of three or more persons,
- existing for a period of time and
- acting in concert with the aim of committing one or more serious crimes⁷⁶⁶ or offences established in accordance with the 2000 United Nations Convention against Transnational Organised Crime,
- in order to obtain, directly or indirectly, a financial or other material benefit.

(1.1) ORGANISED CRIMINAL GROUPS ACTIVE IN THE COUNTRY

1.1.1 How many organised criminal groups operate in your country?

1 – 10	<input type="checkbox"/>
10 – 20	<input type="checkbox"/>
20 – 30	<input type="checkbox"/>
30 – 40	<input type="checkbox"/>
40 – 50	<input type="checkbox"/>
More than 50	<input type="checkbox"/>

1.1.2 How many members do those criminal groups have on average?

1 – 10	<input type="checkbox"/>
10 – 20	<input type="checkbox"/>
20 – 30	<input type="checkbox"/>
30 – 40	<input type="checkbox"/>
40 – 50	<input type="checkbox"/>
More than 50	<input type="checkbox"/>

⁷⁶⁴ See the 2000 United Nations Convention against Transnational Organised Crime, Article 2(a).

⁷⁶⁵ The term 'structured group' means a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure; see the 2000 United Nations Convention against Transnational Organised Crime, Article 2(c).

⁷⁶⁶ The term 'serious crime' shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty; see the 2000 United Nations Convention against Transnational Organised Crime, Article 2(b).

(1.2) COMPOSITION OF THE CRIMINAL GROUPS

1.2.1 Are the groups operating in your country mainly formed by nationals or by non-nationals?

Only nationals	<input type="checkbox"/>
Only non-nationals	<input type="checkbox"/>
Nationals and non-nationals	<input type="checkbox"/>

1.2.1.(1) In case the groups are also formed by non-nationals or only by non nationals, what is the nationality of the non national members?

1.2.1.(2) In case the groups are composed only by non-nationals, do these foreign groups operate autonomously in the territory of your country or do they co-operate with groups composed by nationals?

Autonomously	<input type="checkbox"/>
In co-operation with nationals	<input type="checkbox"/>

(1.3) STRUCTURE OF THE CRIMINAL GROUPS

1.3.1 How would you define the structure of the criminal groups operating in your country? (please tick all the relevant answers)

Mostly hierarchical ⁷⁶⁷	<input type="checkbox"/>
Mostly horizontal ⁷⁶⁸	<input type="checkbox"/>
Mostly 'on a project' basis ⁷⁶⁹	<input type="checkbox"/>
Not Known	<input type="checkbox"/>

(1.4) GEOGRAPHIC SCOPE AND TRANSNATIONAL LINKS OF THE ORGANISED CRIMINAL GROUPS

1.4.1 Please specify if the groups operate mainly on a national or transnational scale:

Mainly on a national scale	<input type="checkbox"/>
Mainly on a transnational scale	<input type="checkbox"/>

⁷⁶⁷ 'In the hierarchical structure different levels of organisation can be recognised, in most cases three or four (typically, reference is made to top, middle and bottom level). The top level consists of leaders, supported by a network of specialists with advisory functions. The middle level is responsible, with a certain degree of autonomy, for carrying out single offences or criminal projects. The concrete commission of criminal offences is to be found at the bottom level of the organisation. Membership at this level is bound to be fluid, or variable, according to current needs of the group, opportunities, and the current situation'. See Council of Europe, European Committee on Crime Problems, Group of specialists on criminal law and criminological aspects of organised crime, *Report on the Organised Crime Situation in Council of Europe Member States - 1999*, p. 7.

⁷⁶⁸ In a horizontal structure centralised leadership is understood to be lacking or weak, indicating that links between 'middle level' operators do exist but are not co-ordinated and controlled by top level actors, organisers or financiers. Middle level operators could more accurately be denominated as group or even project leaders. Ibidem, p. 7.

⁷⁶⁹ This third category refers to groups operating in loosely knit networks of individuals, where criminal operations are typically developed and carried out on a 'project' basis. In this third perspective, even the group leaders may exchange roles with other group members, according to the needs of each criminal project. Then, the subdivision into 'leaders' and 'bottom level' participants emerges on an ad hoc basis, which each time depends on the situation, abilities, strengths and weaknesses of each group member. Ibidem, p. 8.

1.4.1.(1) In case the groups operate mainly on a transnational scale, please list the foreign countries in which they operate (please tick all the relevant answers):

Non EU countries		EU countries	
<input type="checkbox"/>	Albania	<input type="checkbox"/>	Austria
<input type="checkbox"/>	Bulgaria	<input type="checkbox"/>	Belgium
<input type="checkbox"/>	Bosnia and Herzegovina	<input type="checkbox"/>	Denmark
<input type="checkbox"/>	Croatia	<input type="checkbox"/>	Finland
<input type="checkbox"/>	Czech republic	<input type="checkbox"/>	France
<input type="checkbox"/>	FR of Macedonia	<input type="checkbox"/>	Germany
<input type="checkbox"/>	FR Yugoslavia	<input type="checkbox"/>	Greece
<input type="checkbox"/>	Hungary	<input type="checkbox"/>	Ireland
<input type="checkbox"/>	Moldova	<input type="checkbox"/>	Italy
<input type="checkbox"/>	Poland	<input type="checkbox"/>	Luxembourg
<input type="checkbox"/>	Romania	<input type="checkbox"/>	The Netherlands
<input type="checkbox"/>	Slovakia	<input type="checkbox"/>	Portugal
<input type="checkbox"/>	Slovenia	<input type="checkbox"/>	Spain
<input type="checkbox"/>	Turkey	<input type="checkbox"/>	Sweden
<input type="checkbox"/>	Others_____	<input type="checkbox"/>	United Kingdom

1.4.2 Do the organised crime groups co-operate with each other?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

1.4.3 Do the groups co-operate with organised criminal groups based abroad?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO (go to question n. 1.5.1)

1.4.3.(1) If you answered YES to question n. 1.4.3, please specify in which countries these groups are based (please tick all the relevant answers):

	Non EU countries		EU countries
<input type="checkbox"/>	Albania	<input type="checkbox"/>	Austria
<input type="checkbox"/>	Bulgaria	<input type="checkbox"/>	Belgium
<input type="checkbox"/>	Bosnia and Herzegovina	<input type="checkbox"/>	Denmark
<input type="checkbox"/>	Croatia	<input type="checkbox"/>	Finland
<input type="checkbox"/>	Czech republic	<input type="checkbox"/>	France
<input type="checkbox"/>	FR of Macedonia	<input type="checkbox"/>	Germany
<input type="checkbox"/>	FR Yugoslavia	<input type="checkbox"/>	Greece
<input type="checkbox"/>	Hungary	<input type="checkbox"/>	Ireland
<input type="checkbox"/>	Moldova	<input type="checkbox"/>	Italy
<input type="checkbox"/>	Poland	<input type="checkbox"/>	Luxembourg
<input type="checkbox"/>	Romania	<input type="checkbox"/>	The Netherlands
<input type="checkbox"/>	Slovakia	<input type="checkbox"/>	Portugal
<input type="checkbox"/>	Slovenia	<input type="checkbox"/>	Spain
<input type="checkbox"/>	Turkey	<input type="checkbox"/>	Sweden
<input type="checkbox"/>	Others.....	<input type="checkbox"/>	United Kingdom

(1.5) ACTIVITIES OF THE ORGANISED CRIMINAL GROUPS

1.5.1 For each of the following criminal activities please indicate those in which organised criminal groups are involved (please tick all the relevant answers):

	YES	NO
Armed robbery	<input type="checkbox"/>	<input type="checkbox"/>
Bank fraud	<input type="checkbox"/>	<input type="checkbox"/>
Child pornography	<input type="checkbox"/>	<input type="checkbox"/>
Computer crimes, including internet fraud	<input type="checkbox"/>	<input type="checkbox"/>
Drug producing	<input type="checkbox"/>	<input type="checkbox"/>
Drug trafficking	<input type="checkbox"/>	<input type="checkbox"/>
Environmental crime (e.g. illicit waste disposal)	<input type="checkbox"/>	<input type="checkbox"/>
Explosives (illegal traffic)	<input type="checkbox"/>	<input type="checkbox"/>
Forgery	<input type="checkbox"/>	<input type="checkbox"/>
Fraud	<input type="checkbox"/>	<input type="checkbox"/>
Gambling (illegal schemes)	<input type="checkbox"/>	<input type="checkbox"/>
Homicide	<input type="checkbox"/>	<input type="checkbox"/>
Illegal activities surrounding prostitution	<input type="checkbox"/>	<input type="checkbox"/>
Insurance scams	<input type="checkbox"/>	<input type="checkbox"/>
Intellectual property infringements (including counterfeiting, trade-mark and patent infringements)	<input type="checkbox"/>	<input type="checkbox"/>
Kidnapping for ransom	<input type="checkbox"/>	<input type="checkbox"/>
Loan sharking/Usury	<input type="checkbox"/>	<input type="checkbox"/>
Money laundering	<input type="checkbox"/>	<input type="checkbox"/>
Production and sale of pirate audio CDs and software	<input type="checkbox"/>	<input type="checkbox"/>
Racketeering	<input type="checkbox"/>	<input type="checkbox"/>
Smuggling of cigarettes	<input type="checkbox"/>	<input type="checkbox"/>
Smuggling of cultural artefacts	<input type="checkbox"/>	<input type="checkbox"/>
Smuggling of endangered species	<input type="checkbox"/>	<input type="checkbox"/>
Smuggling of petrol	<input type="checkbox"/>	<input type="checkbox"/>
Trafficking in human beings	<input type="checkbox"/>	<input type="checkbox"/>
Trafficking of human organs	<input type="checkbox"/>	<input type="checkbox"/>
Trafficking of nuclear material	<input type="checkbox"/>	<input type="checkbox"/>
Trafficking of weapons	<input type="checkbox"/>	<input type="checkbox"/>
Vehicle theft	<input type="checkbox"/>	<input type="checkbox"/>

Vehicle trafficking	<input type="checkbox"/>	<input type="checkbox"/>
Other criminal activities (please specify) -----	<input type="checkbox"/>	<input type="checkbox"/>

1.5.2 In case the organised criminal groups of your country operate in trafficking offences, is your country a origin, transit, or destination country? (tick all the relevant answers)

	Origin	Transit	Destination
Drug trafficking	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trafficking in human beings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trafficking of human organs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trafficking of nuclear material	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trafficking of firearms	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

1.5.3 Do organised criminal groups in your country infiltrate the legitimate economy, i.e. use the proceeds from crime to manage licit activities?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO (go to question n. 2.1.1)

1.5.3.(1) If you answered YES to question n. 1.5.3, please specify the sectors of the legitimate economy that seem to be at greatest risk of infiltration by the organised criminal groups operating in you country (please tick all the relevant answers):

Real estate sector	<input type="checkbox"/>
Construction sector	<input type="checkbox"/>
Financial sector	<input type="checkbox"/>
Tourism sector	<input type="checkbox"/>
Waste disposal sector	<input type="checkbox"/>
Procurements sector (government contracts for the procurement of goods and services)	<input type="checkbox"/>
Casinos	<input type="checkbox"/>
Nightlife services (such as bars and night-club)	<input type="checkbox"/>
Legal profession (such as lawyers and notaries)	<input type="checkbox"/>
Other (please specify) -----	<input type="checkbox"/>

SECTION 3. LAW ENFORCEMENT

(3.1) INVESTIGATIVE UNITS

3.1.1 Have special investigative units been established in your country to carry out investigations into organised crime or into criminal activities typically related to organised crime (e.g. money laundering, fraud or trafficking in human beings)?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO (go to question n. 3.1.1.(2))

3.1.1.(1) If you answered YES to question n. 3.1.1, please quote the denomination of these units below:

3.1.1.(2) If you answered NO to question n. 3.1.1, please state below the denomination of the office/offices conducting investigations into organised crime in your country:

(3.2) MEANS OF INVESTIGATION

3.2.1 Does the national legislation provide for special means of investigation for organised crime?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO (go to question n. 4.1)

3.2.1.(1) If you answered YES to question n. 3.2.1, please specify the special means of investigation that can be used by the investigators (tick all the relevant answers):

<input type="checkbox"/>	1. Interception of telephone conversations
<input type="checkbox"/>	2. Interception of fax transmissions
<input type="checkbox"/>	3. Interception of Internet transmissions
<input type="checkbox"/>	4. Audio or video recording of events taking place on private premises
<input type="checkbox"/>	5. Undercover operations
<input type="checkbox"/>	6. Use of storefronts by investigative units
<input type="checkbox"/>	7. Covert methods such as controlled delivery

3.2.1.(2) Please specify which authority decides the application of each of the means of investigation you selected in answer n. 3.2.1.(1):

	Prosecutor	High ranking official in the Ministry of Interior	Investigative agencies (please specify)	Others (please specify)
1. Interceptions of telephone conversations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> -----	<input type="checkbox"/> -----
2. Interceptions of fax transmissions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> -----	<input type="checkbox"/> -----
3. Intercepting of Internet transmissions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> -----	<input type="checkbox"/> -----
4. Audio or video recording of events taking place on private premises	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> -----	<input type="checkbox"/> -----
5. Undercover operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> -----	<input type="checkbox"/> -----
6. Use of storefronts by investigative units	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> -----	<input type="checkbox"/> -----
7. Covert methods such as controlled delivery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> -----	<input type="checkbox"/> -----

3.2.1.(3) For which type of crime is it possible to use each of the means of investigation you selected in answer n. 3.2.1.(1)?

	Drug trafficking related crimes	All serious crimes (i.e. all those crimes typically related to organised crime)	All crimes
1. Interception of telephone conversations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Interception of fax transmissions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Interception of Internet transmissions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Audio or video recording of events taking place on private premises	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Undercover operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Use of storefronts by investigative units	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Covert methods such as controlled delivery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3.2.1.(4) Answer this question only if interceptions are permitted in organised crime investigations. Is it possible to use the material intercepted as evidence during a criminal trial?

<input type="checkbox"/>	YES (please specify under which conditions) ----- -----
<input type="checkbox"/>	NO

SECTION 4. OBSTACLES TO INVESTIGATING ORGANISED CRIME AND SUGGESTIONS TO OVERCOME THEM

4.1 According to your experience, please tick the elements you consider to be most significant obstacles to investigating organised criminal groups in your country (please tick all the relevant answers):

<input type="checkbox"/>	Lack of legislation (please specify) ----- -----
<input type="checkbox"/>	Inadequate follow-up of investigative techniques
<input type="checkbox"/>	Limited investigative powers
<input type="checkbox"/>	Lack of a multidisciplinary approach, i.e. of co-operation between officers with different skills in the development of organised crime investigations
<input type="checkbox"/>	Use, by organised criminal groups, of dummies, i.e. people of apparent, but not real power over the criminal members' assets
<input type="checkbox"/>	Lack of human resources within the offices participating in organised crime investigations
<input type="checkbox"/>	Lack of material resources within the offices participating in organised crime investigations
<input type="checkbox"/>	Lack of specialised investigative units
<input type="checkbox"/>	Frequent turnover of specialised personnel participating in organised crime investigations
<input type="checkbox"/>	Other (please specify) _____

4.2 Please write below your suggestions for the improvement of investigations into organised crime in your country:

SECTION 5. ASSISTANCE IN PRE TRIAL INVESTIGATIONS OF TRANSNATIONAL ORGANISED CRIME CASES LED BY POLICE OFFICERS

Please note that in the following part of the questionnaire the term 'police officers' refers to police officers, custom officers, and police officers belonging to special anti-organised crime units (if they exist in your country).

Please also note that in this section of the questionnaire the term 'investigations led by police officers' refers to the investigation activities undertaken by police officers in order to present the case to the prosecutor/investigating judge. Therefore, at this stage the prosecutor has not stepped into the investigations and criminal proceedings in court have not yet begun.

(5.1) SHARING OF INFORMATION

5.1.1 Do police officers in your country maintain a national centralised database, which contains information about persons wanted in your country for participating in organised criminal groups?

<input type="checkbox"/>	YES (it contains only information about persons wanted for participating in organised criminal groups)
<input type="checkbox"/>	YES (it contains information about persons wanted for all kind of crime, including participation in organised criminal groups)
<input type="checkbox"/>	NO (go to question n. 5.1.2)

5.1.1.(2) If you answered YES to question n. 5.1.1, can a foreign police officer access the information contained in the database?

<input type="checkbox"/>	YES (please specify under which conditions it is possible)
<input type="checkbox"/>	NO

5.1.2 Do police officers in your country maintain a national centralised database, which contains information on persons convicted in your country for participating in organised criminal groups?

<input type="checkbox"/>	YES (it contains information on persons convicted only for participation in organised criminal groups)
<input type="checkbox"/>	YES (it contains information on persons convicted for all kinds of crime, including participation in organised criminal groups)

5.1.2.(2) If you answered YES to question n. 5.1.2, can a foreign police officer access the information contained in the database?

<input type="checkbox"/>	YES (please specify under which conditions it is possible)
<input type="checkbox"/>	NO

(5.2) TRAINING OF POLICE OFFICER

5.2.1 On a scale from 0 to 3 (where 0=no training, 1=low level of training, 2=medium level of training and 3=high level of training), how would you evaluate the level of training of police officer in investigating transnational organised crime?

0	1	2	3
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

5.2.2 Are there joint seminars or specialisation courses organised with the purpose of training police officers of different countries in the field of Transnational organised crime?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

(5.3) COMPUTER EQUIPMENT

5.3.1 Do all police officers have a computer network (intranet) and an official e-mail account in their office?

	YES	NO
Computer network (intranet)	<input type="checkbox"/>	<input type="checkbox"/>
Official e-mail account	<input type="checkbox"/>	<input type="checkbox"/>

(5.4) ASSISTANCE THROUGH A NATIONAL CENTRALISED AUTHORITY

5.4.1 In case police officers of your country need assistance from police officers in another country, do they have to channel their requests for assistance through a national central authority?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO (go to question n. 5.5.1)

5.4.1.(1) If you answered YES to question n. 5.4.1, which is this authority?

<input type="checkbox"/>	Ministry of Interior
<input type="checkbox"/>	Other authority (please specify)

(5.5) ASSISTANCE THROUGH DIRECT CONTACT

5.5.1 Do agreements or legislation exist, that provide for direct police co-operation with police of other countries?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO (go to question n. 5.5.2)

5.5.1.(1) If you answered YES to question n. 5.5.1, please indicate the countries with which formal direct police co-operation is in place and the date of enactment of the agreements (tick all the relevant answers):

	Non EU countries	Date		EU countries	Date
<input type="checkbox"/>	Albania		<input type="checkbox"/>	Austria	
<input type="checkbox"/>	Bulgaria		<input type="checkbox"/>	Belgium	
<input type="checkbox"/>	Bosnia and Herzegovina		<input type="checkbox"/>	Denmark	
<input type="checkbox"/>	Croatia		<input type="checkbox"/>	Finland	
<input type="checkbox"/>	Czech republic		<input type="checkbox"/>	France	
<input type="checkbox"/>	FR of Macedonia		<input type="checkbox"/>	Germany	
<input type="checkbox"/>	FR Yugoslavia		<input type="checkbox"/>	Greece	
<input type="checkbox"/>	Hungary		<input type="checkbox"/>	Ireland	
<input type="checkbox"/>	Moldova		<input type="checkbox"/>	Italy	
<input type="checkbox"/>	Poland		<input type="checkbox"/>	Luxembourg	
<input type="checkbox"/>	Romania		<input type="checkbox"/>	The Netherlands	
<input type="checkbox"/>	Slovakia		<input type="checkbox"/>	Portugal	
<input type="checkbox"/>	Slovenia		<input type="checkbox"/>	Spain	
<input type="checkbox"/>	Turkey		<input type="checkbox"/>	Sweden	
<input type="checkbox"/>	Others -----		<input type="checkbox"/>	United Kingdom	

5.5.1.(2) If you answered YES to question n. 5.5.1, are police officers in your country informed of the possibility of being able to co-operate with police officers in other countries?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

5.5.1.(3) If you answered YES to question n. 5.5.1, is Interpol the normal instrument for identifying the competent counterparts in foreign countries?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO (please specify how police officers in your country identify the name of the competent counterpart to whom they need to address a request for assistance) ----- ----- -----

5.5.2 During the course of an investigation into transnational organised crime, do police officers in your country, enter into direct contact with police officers of other countries, whether a formal agreement exists or not?

<input type="checkbox"/>	YES (please list the countries with which it occurs) ----- -----
<input type="checkbox"/>	NO

5.5.3 If police officers in your country are directly contacted by police officers of another country asking for assistance, but they do not have jurisdiction to implement that request, are they obliged by national law to forward the request to their competent colleagues?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

5.5.4 When the police of your country gather information on a transnational organised crime ring, that could be useful to develop an investigation in another country, are they obliged by law to forward that information to the authorities of the other country?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

5.5.5 When foreign police officers start a shadowing operation (i.e. the covert observation of the movements of a person) in their country, can they be authorised to continue it within the borders of your country in co-operation with the police of your country?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

5.5.6 Can the police in your country send documents to the police of another country, if the latter have requested them?

	YES (please specify, if needed, the conditions under which this is possible (e.g. existence of a MLAT))	NO
Bank records	<input type="checkbox"/> -----	<input type="checkbox"/>
Phone records	<input type="checkbox"/> -----	<input type="checkbox"/>
Documents related to auto vehicle ownership	<input type="checkbox"/> -----	<input type="checkbox"/>
Documents related to criminal records	<input type="checkbox"/> -----	<input type="checkbox"/>
Other (specify) -----	<input type="checkbox"/> -----	<input type="checkbox"/>

(5.6) ASSISTANCE THROUGH INTERPOL AND EUROPOL

5.6.1 Does the Interpol National Bureau in your country provide the police of another country with the following acts of co-operation, if requested?

	YES	NO
Information regarding investigations of crimes committed in your country	<input type="checkbox"/>	<input type="checkbox"/>
Investigations aimed at tracing goods located in your country, which are related to a crime committed abroad	<input type="checkbox"/>	<input type="checkbox"/>
Information regarding criminal records	<input type="checkbox"/>	<input type="checkbox"/>
Information related to the ownership of auto vehicles and regarding driving licences issued in your country	<input type="checkbox"/>	<input type="checkbox"/>
Information regarding the ownership of phone numbers	<input type="checkbox"/>	<input type="checkbox"/>

5.6.2 On a scale from 0 to 3 (where 0=no use, 1=low frequency of use, 2=medium frequency of use and 3=high frequency of use), how would you evaluate the frequency of use of Interpol records and its communication system by prosecutors investigating transnational organised crime in your country?

0	1	2	3
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

5.6.3 On a scale from 0 to 3 (where 0=no cooperation, 1=low level of cooperation, 2=medium level of cooperation and 3=high level of cooperation) please indicate the degree of cooperation between your country and Interpol in the following areas:

	0	1	2	3
Exchange of strategic and operational information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exchange of financial information on suspected corporate entities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Provision of direct contacts with local law enforcement authorities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Provision of direct contacts with local prosecution offices	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exchange of information on investigative procedures and crime prevention methods	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Training initiatives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Advice and support in individual investigations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exchange of liaison officers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Participation in 'joint investigative teams' ⁷⁷⁰ in a support capacity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Participation in 'joint investigative teams' ⁷⁷¹ in an operative capacity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

⁷⁷⁰ In the context of this questionnaire the term 'joint investigative teams' means that agents from different countries can co-operate by exchanging their information (support capacity) and/or by participating at investigative operations (operative capacity).

⁷⁷¹ See above, footnote 7.

5.6.4 On a scale from 0 to 3 (where 0=no cooperation, 1=low level of cooperation, 2=medium level of cooperation and 3=high level of cooperation) please indicate the degree of cooperation between your country and Europol in the following areas:

	0	1	2	3
Exchange of strategic and operational information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exchange of financial information on suspected corporate entities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Provision of direct contacts with local law enforcement authorities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Provision of direct contacts with local prosecution offices	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exchange of information on investigative procedures and crime prevention methods	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Training initiatives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Advice and support in individual investigations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exchange of liaison officers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Participation in 'joint investigative teams' ⁷⁷² in a support capacity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Participation in 'joint investigative teams' ⁷⁷³ in an operative capacity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/> -----	<input type="checkbox"/> -----	<input type="checkbox"/> -----	<input type="checkbox"/> -----

(5.7) COOPERATION AMONG LAW ENFORCEMENT AGENCIES

5.7.1 Does your country post liaison officers to foreign countries, who cooperate with the local police officers in international cases?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

⁷⁷² See above, footnote 7.

⁷⁷³ See above, footnote 7.

5.7.1 (1) If you answered YES to question n. 5.7.1, please indicate the countries in which liaison officers are present (tick all the relevant answers):

	Non EU countries	Date		EU countries	Date
<input type="checkbox"/>	Albania		<input type="checkbox"/>	Austria	
<input type="checkbox"/>	Bulgaria		<input type="checkbox"/>	Belgium	
<input type="checkbox"/>	Bosnia and Herzegovina		<input type="checkbox"/>	Denmark	
<input type="checkbox"/>	Croatia		<input type="checkbox"/>	Finland	
<input type="checkbox"/>	Czech republic		<input type="checkbox"/>	France	
<input type="checkbox"/>	FR of Macedonia		<input type="checkbox"/>	Germany	
<input type="checkbox"/>	FR Yugoslavia		<input type="checkbox"/>	Greece	
<input type="checkbox"/>	Hungary		<input type="checkbox"/>	Ireland	
<input type="checkbox"/>	Moldova		<input type="checkbox"/>	Italy	
<input type="checkbox"/>	Poland		<input type="checkbox"/>	Luxembourg	
<input type="checkbox"/>	Romania		<input type="checkbox"/>	The Netherlands	
<input type="checkbox"/>	Slovakia		<input type="checkbox"/>	Portugal	
<input type="checkbox"/>	Slovenia		<input type="checkbox"/>	Spain	
<input type="checkbox"/>	Turkey		<input type="checkbox"/>	Sweden	
<input type="checkbox"/>	Others -----		<input type="checkbox"/>	United Kingdom	

5.7.1 (2) If you answered YES to question n. 5.7.1, please specify which of the following activities they fulfil (tick all the relevant answers):

<input type="checkbox"/>	They provide direct links with foreign law enforcement authorities
<input type="checkbox"/>	They help directly in the exchange of information and statistics
<input type="checkbox"/>	They carry out individual core work (investigations, etc.)
<input type="checkbox"/>	Other (please specify) ----- -----

5.7.2 Do law enforcement agencies of your country carry out 'joint investigative teams'⁷⁷⁴ with foreign law enforcement authorities?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

5.7.2 (1) If you answered YES to question n. 5.7.2, please indicate the countries with which 'joint investigative teams' are established (tick all the relevant answers):

	Non EU countries	Date		EU countries	Date
<input type="checkbox"/>	Albania		<input type="checkbox"/>	Austria	
<input type="checkbox"/>	Bulgaria		<input type="checkbox"/>	Belgium	
<input type="checkbox"/>	Bosnia and Herzegovina		<input type="checkbox"/>	Denmark	
<input type="checkbox"/>	Croatia		<input type="checkbox"/>	Finland	
<input type="checkbox"/>	Czech republic		<input type="checkbox"/>	France	
<input type="checkbox"/>	FR of Macedonia		<input type="checkbox"/>	Germany	
<input type="checkbox"/>	FR Yugoslavia		<input type="checkbox"/>	Greece	
<input type="checkbox"/>	Hungary		<input type="checkbox"/>	Ireland	
<input type="checkbox"/>	Moldova		<input type="checkbox"/>	Italy	
<input type="checkbox"/>	Poland		<input type="checkbox"/>	Luxembourg	
<input type="checkbox"/>	Romania		<input type="checkbox"/>	The Netherlands	
<input type="checkbox"/>	Slovakia		<input type="checkbox"/>	Portugal	
<input type="checkbox"/>	Slovenia		<input type="checkbox"/>	Spain	
<input type="checkbox"/>	Turkey		<input type="checkbox"/>	Sweden	
<input type="checkbox"/>	Others -----		<input type="checkbox"/>	United Kingdom	

5.7.3 Do law enforcement agencies of your country carry out international joint customs surveillance operations?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

5.7.3 (1) If you answered YES to question n. 5.7.3, please indicate the countries with which international joint customs surveillance operations are established (tick all the relevant answers):

⁷⁷⁴ See above, footnote 7.

	Non EU countries	Date		EU countries	Date
<input type="checkbox"/>	Albania		<input type="checkbox"/>	Austria	
<input type="checkbox"/>	Bulgaria		<input type="checkbox"/>	Belgium	
<input type="checkbox"/>	Bosnia and Herzegovina		<input type="checkbox"/>	Denmark	
<input type="checkbox"/>	Croatia		<input type="checkbox"/>	Finland	
<input type="checkbox"/>	Czech republic		<input type="checkbox"/>	France	
<input type="checkbox"/>	FR of Macedonia		<input type="checkbox"/>	Germany	
<input type="checkbox"/>	FR Yugoslavia		<input type="checkbox"/>	Greece	
<input type="checkbox"/>	Hungary		<input type="checkbox"/>	Ireland	
<input type="checkbox"/>	Moldova		<input type="checkbox"/>	Italy	
<input type="checkbox"/>	Poland		<input type="checkbox"/>	Luxembourg	
<input type="checkbox"/>	Romania		<input type="checkbox"/>	The Netherlands	
<input type="checkbox"/>	Slovakia		<input type="checkbox"/>	Portugal	
<input type="checkbox"/>	Slovenia		<input type="checkbox"/>	Spain	
<input type="checkbox"/>	Turkey		<input type="checkbox"/>	Sweden	
<input type="checkbox"/>	Others -----		<input type="checkbox"/>	United Kingdom	

5.7.4 In case you have made use of one of the following means of law enforcement cooperation, on a scale from 0 to 3 (where 0=no usefulness, 1= low usefulness, 2= medium usefulness, 3=high usefulness) how would you evaluate their level of usefulness?

Liaison officers	0 <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
Joint investigative teams	0 <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
International joint customs surveillance operations	0 <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>

5.7.4 (1) Please briefly give reasons for your answer to question n. 5.7.4.

SECTION 6. OBSTACLES TO POLICE ASSISTANCE RECEIVED BY YOUR COUNTRY FROM OTHER COUNTRIES, IN PRE TRIAL INVESTIGATIONS INTO TRANSNATIONAL ORGANISED CRIME, AND SUGGESTIONS TO OVERCOME THEM

6.1 According to your experience, please tick the elements you consider to be the most significant obstacles to police assistance received by your country from other countries in pre trial investigations into transnational organised crime:

<input type="checkbox"/>	Lack of response to requests for assistance
<input type="checkbox"/>	Delay of response to requests for assistance
<input type="checkbox"/>	Lack of harmonisation in legislation
<input type="checkbox"/>	Difficulty in identifying the foreign competent counterpart to whom the request for assistance must be addressed
<input type="checkbox"/>	Language problems
<input type="checkbox"/>	Lack of human resources
<input type="checkbox"/>	Lack of financial resources
<input type="checkbox"/>	Lack of training
<input type="checkbox"/>	High turnover of personnel in the police forces
<input type="checkbox"/>	Other (please specify) ----- -----

6.2 Please write below your suggestions for the improvement of police assistance received by your country from other countries in pre trial investigations into transnational organised crime:

SECTION 9. DATA PROTECTION RULES

Please note that, in the context of this questionnaire, the term ‘personal data’ means any information related to an identified or identifiable individual (‘data subject’).

(9.1) LEGISLATIVE FRAMEWORK REGULATING THE PROTECTION OF PERSONAL DATA

9.1.1 Is there a legal provision in your country that protect personal data?

<input type="checkbox"/>	YES (please quote the number and year of enactment of the law and, if possible, enclose the text of the law, preferably in English)

<input type="checkbox"/>	NO

9.1.1 (1) If you answered YES to question n. 9.1.1, do the legal provisions on personal data protection apply to the activity of law enforcement agencies/prosecution offices⁷⁷⁵?

	Law enforcement agencies	Prosecution offices
YES	<input type="checkbox"/>	<input type="checkbox"/>
NO	<input type="checkbox"/>	<input type="checkbox"/>

⁷⁷⁵ In the context of this questionnaire, the terms ‘law enforcement agencies’ and ‘prosecution offices’ indicate the institutions which respectively police officers and prosecutors work for.

9.1.2 If the legal provisions regarding data protection do not apply to the activities of law enforcement agencies/prosecution offices please specify why the exemption is granted (please tick all the relevant answers):

	Law enforcement agencies	Prosecution offices
National security	<input type="checkbox"/>	<input type="checkbox"/>
Public order	<input type="checkbox"/>	<input type="checkbox"/>
Investigative secrecy	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>	<input type="checkbox"/>
	-----	-----
	-----	-----

9.1.3 Has your country concluded any bilateral or multilateral agreements within the framework of police and judicial cooperation including specific provisions for personal data protection?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

9.1.3 (1) If you answered YES, please indicate the countries with which formal agreements are in place (tick all the relevant answers)

	Non EU countries	Date		EU countries	Date
<input type="checkbox"/>	Albania		<input type="checkbox"/>	Austria	
<input type="checkbox"/>	Bulgaria		<input type="checkbox"/>	Belgium	
<input type="checkbox"/>	Bosnia and Herzegovina		<input type="checkbox"/>	Denmark	
<input type="checkbox"/>	Croatia		<input type="checkbox"/>	Finland	
<input type="checkbox"/>	Czech republic		<input type="checkbox"/>	France	
<input type="checkbox"/>	FR of Macedonia		<input type="checkbox"/>	Germany	
<input type="checkbox"/>	FR Yugoslavia		<input type="checkbox"/>	Greece	
<input type="checkbox"/>	Hungary		<input type="checkbox"/>	Ireland	
<input type="checkbox"/>	Moldova		<input type="checkbox"/>	Italy	
<input type="checkbox"/>	Poland		<input type="checkbox"/>	Luxembourg	
<input type="checkbox"/>	Romania		<input type="checkbox"/>	The Netherlands	
<input type="checkbox"/>	Slovakia		<input type="checkbox"/>	Portugal	
<input type="checkbox"/>	Slovenia		<input type="checkbox"/>	Spain	
<input type="checkbox"/>	Turkey		<input type="checkbox"/>	Sweden	
<input type="checkbox"/>	Others -----		<input type="checkbox"/>	United Kingdom	

9.1.4 Does any formal agreement exist with Europol (the European Police Office) regarding the transmission of personal data by/to Europol?

	Data by EUROPOL	Data to EUROPOL
YES	<input type="checkbox"/>	<input type="checkbox"/>
NO	<input type="checkbox"/>	<input type="checkbox"/>

(9.2) SUPERVISORY AUTHORITY

9.2.1 Is there a supervisory authority in your State that deals with the protection of personal data?

<input type="checkbox"/>	YES (please specify the name) -----
<input type="checkbox"/>	NO

9.2.1 (1) If you answered YES to question n. 9.2.1, please indicate the powers and functions of the supervisory authority (please tick all the relevant answers):

<input type="checkbox"/>	Power of investigation
<input type="checkbox"/>	Power to bring violations of data protection rules to the attention of competent judicial authorities
<input type="checkbox"/>	Powers to start legal proceedings
<input type="checkbox"/>	Other

9.2.1 (2) If you answered YES to question n. 9.2.1, is this supervisory authority (please tick the relevant answer)⁷⁷⁶:

<input type="checkbox"/>	Dependent (please specify on which entity – government or other – the authority is dependent) ----- -----
<input type="checkbox"/>	Independent

(9.3) TRANSBORDER FLOWS OF PERSONAL DATA

⁷⁷⁶ In the context of this questionnaire, the supervisory authority is to be considered *independent* only when all of the following elements are present:

- no external intervention (or very limited intervention) in the methods used to appoint its members;
- appropriate duration of exercise of authority’s functions;
- allocation of sufficient resources;
- decision making is not subject to external orders or injunctions.

If one or more of these conditions are not fulfilled, the authority has to be considered dependent. See Council of Europe, Explanatory Report to the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and transborder data flows, adopted on 23 May 2001.

9.3.1 Are law enforcement agencies/prosecution offices allowed to transfer personal data⁷⁷⁷ to other States that are not Party to the 1981 Convention for the protection of Individuals with regard to Automatic Processing of Personal Data (COE – ETS 108)?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

9.3.1(1) If you answered YES to question n. 9.3.1, is this transfer regulated by legal provisions?

<input type="checkbox"/>	YES (please quote the number and year of enactment and, if possible, enclose the text of the provision, preferably in English)
<input type="checkbox"/>	NO

9.3.2 In your experience, has a request for assistance in a criminal investigation, *originating from States that are not Party to the 1981 Convention*, been refused because the recipient State could not guarantee:

<input type="checkbox"/>	Data quality ⁷⁷⁸
<input type="checkbox"/>	Confidentiality of communications
<input type="checkbox"/>	Others (please specify)

⁷⁷⁷ In the field of police/judicial cooperation, personal data may include both personal data related to ongoing criminal proceedings and personal data related to past criminal convictions. See Council of Europe, *Report on the Impact of Data Protection Principles on Judicial Data in Criminal Matters including in the framework of Judicial Cooperation in Criminal Matters (2002)*, available on the website of the Council of Europe (<http://www.coe.int>).

⁷⁷⁸ For the purposes of this questionnaire, the term 'data quality' means data obtained and processed fairly and lawfully, stored only for specified and legitimate purposes, adequate, accurate and kept up to date. See the 1981 Convention for the protection of Individuals with regard to Automatic Processing of Personal Data (COE – ETS 108).

(9.4) TREATMENT OF PERSONAL DATA BY LAW ENFORCEMENT AGENCIES/PROSECUTION OFFICES

9.4.1 Are law enforcement agencies/prosecution offices duty-bound to make sure that personal data are not further processed in a way which is incompatible with the purposes for which the data were collected?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

9.4.2 Are law enforcement agencies/prosecution offices the duty-bound to apply security measures⁷⁷⁹ to the data collected?

<input type="checkbox"/>	YES (please specify which security measures are applied to the data) ----- ----- -----
<input type="checkbox"/>	NO

9.4.3 Who is ultimately responsible in your country for the application of the data protection provisions during the investigation of a crime conducted by police/prosecutors?

<input type="checkbox"/>	The head of the relevant office
<input type="checkbox"/>	Individual judges/prosecutors
<input type="checkbox"/>	Members of the administrative staff
<input type="checkbox"/>	Others (please specify)

⁷⁷⁹ For the purposes of this questionnaire, the term 'security measures' means any technical and organisational device, which is designed to ensure a level of security appropriate to the risks implied by the processing of data and the nature of the personal data to be protected. In particular, these measures should prevent any unauthorised disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and all other unlawful forms of processing. See Directive 95/46/EC of the European Parliament and the Council of 24 October 1995, and Regulation No. 45/2001 of the European Parliament and the Council of 18 December 2001.

SECTION 10. GOOD PRACTICES

In the context of the Final Report the term 'good practices' will be used in a broader sense to encompass 'all the organisational and structural measures adopted in order to apply the formal rules of judicial and police cooperation in the smoothest way possible and in order to achieve the objectives of that cooperation'. They may consist in structures (i.e. organisations dealing with international or regional cooperation) and methods (i.e. cooperation protocols, arrangements in TOC investigations for police officers and magistrates, investigative tools, modus operandi in TOC cases), which in the experience of the practitioners have led to positive results in the fight against TOC within the legal framework.

Some examples of good practices are provided below. We kindly ask you to answer the questions by ticking the boxes on the right of the good practices enacted in your country. Please feel free to add any other good practices present in your country to the list.

- acknowledgement of all requests and written enquiries concerning the execution of requests;
- providing the requesting authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing the request;
- setting priority to requests which have clearly been marked 'urgent` by the requesting authority;
- giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authority how the difficulty might be overcome;
- explaining when the assistance requested is likely to be provided;
- explaining the reasons for the urgency or deadline;
- ensuring that requests are submitted in compliance with the relevant treaty or other international arrangements;
- providing the requested authorities with the name and contact details, including telephone and fax numbers, of the authority and, if possible, the person responsible for issuing the request;
- compliance with the formalities and procedures expressly indicated by the requesting member state;
- direct sending of procedural documents;
- use of fax and e-mail to send requests;
- spontaneous exchange of information;
- hearing by video or telephone conference of witnesses and experts;
- use of controlled deliveries;
- use of joint investigative teams;
- use of covert investigations;
- interception of communications;

- the protection of personal data provided in response to a request;
- establishment of common criminal databases;
- liaison officers and magistrates posted in the countries of the Region and in EU member states, or in the organisations that are relevant for police and judicial cooperation (Interpol, Eurojust, Europol, SECI Center, etc.);
- joint operational meetings;
- direct channels of communication;
- interagency coordination protocols;
- other:

B) QUESTIONNAIRE FOR PUBLIC PROSECUTORS

INSTRUCTIONS FOR THE COMPILATION OF THE QUESTIONNAIRE

In view of your expertise in and knowledge of the topics dealt with, we kindly ask for your co-operation in answering this questionnaire, which has been prepared for the development of the Research Project entitled *The Contribution of Data Exchange Systems to the Fight Against Organised Crime in the SEE Countries: an Assessment*. This Project has been developed as part of the Stability Pact Initiative against organised crime in South Eastern Europe (SPOC). The Project is being carried out by TRANSCRIME, Research Centre on Transnational Crime of the University of Trento (Italy), for the Office of the Special Co-ordinator of the Stability Pact for South Eastern Europe; it is supported by the Piedmont Region (Italy), the South East European Co-operative Initiative, the Province of Turin (Italy) and the Autonomous Province of Trento (Italy).

The project's goal is to assess how information exchange systems function in the fight against organised crime in the region, and the way in which the countries involved respond to this problem. Its final objective is to improve and strengthen the process of information exchange, by encouraging the adoption of legal instruments, bilateral and multilateral agreements in addition to enhancing reciprocal knowledge of practices and capacity for co-operation.

The Stability Pact Mission begins with the assumption that organised crime '*threatens the objectives of the Stability Pact and efforts to institute the rule of law, democracy, human rights and viable social and economic order in South Eastern Europe*'. On the basis of this assumption, participants in the Stability Pact have committed themselves to developing a common strategy of preventive and control measures aimed at strengthening the fight against organised crime and related phenomena at all levels in a well co-ordinated manner, in line with European and other international standards. The framework of reference for these standards is identified in the Council of Europe's Conventions and Recommendations, in the EU *acquis* in the field of Justice and Home Affairs, as well as in the more relevant United Nations Conventions (especially the three Conventions concerning drug abuse and trafficking and the United Nations Convention on Transnational Organised Crime).

Your co-operation in the Study will be fully acknowledged in the Final Report, a copy of which will be sent to you.

This questionnaire is organised into the following 10 Sections. In view of your expertise you are kindly asked to reply to sections 1, 2, 2-bis, 7, 8, 9 and 10.

SECTION 1. ORGANISED CRIME SITUATION. The objective of this Section is to obtain a 'picture' of the organised crime situation in the country. It is organised as follows:

- (1.1) Organised criminal groups active in the country
- (1.2) Composition of the criminal groups
- (1.3) Structure of the criminal groups
- (1.4) Geographic scope and transnational links of the organised criminal groups
- (1.5) Activities of the organised criminal groups

SECTION 2. CRIMINAL LAW. This Section aims at understanding the legal framework in the fight against organised crime. It is organised as follows:

- (2.1) Participation in a criminal association
- (2.2) Witnesses
- (2.3) Liability of legal persons
- (2.4) Seizure and confiscation of the proceeds from crime
- (2.5) Money laundering
- (2.6) Legal reforms
- (2.7) Drug trafficking
- (2.8) Trafficking in human beings

SECTION 2-BIS. CRIMINAL PROCEDURE. This Section aims at understanding the main characteristics of the criminal justice system and the potential obstacles to cooperation arising from the differences among them. It is organised as follows:

- (2-bis.1) Criminal justice system
- (2-bis.2) Search and means of evidence
- (2-bis.3) Criminal procedure and judicial cooperation

SECTION 3. LAW ENFORCEMENT. This Section aims at understanding law enforcement response to organised crime. It is organised as follows:

- (3.1) Investigative units
- (3.2) Means of investigation

SECTION 4. OBSTACLES IN INVESTIGATING ORGANISED CRIME, AND SUGGESTIONS TO OVERCOME THEM. This Section aims at understanding existing obstacles in investigating organised crime and at collecting suggestions to overcome them.

SECTION 5. ASSISTANCE IN PRE TRIAL INVESTIGATIONS OF TRANSNATIONAL ORGANISED CRIME CASES LED BY POLICE OFFICERS. This Section aims at understanding how police co-operation in transnational organised crime cases is working. It is organised as follows:

- (5.1) Sharing of information
- (5.2) Training of law enforcement agents
- (5.3) Computer equipment
- (5.4) Assistance through a national centralised authority
- (5.5) Assistance through direct contact
- (5.6) Assistance through Interpol and Europol
- (5.7) Cooperation among law enforcement agencies

SECTION 6. OBSTACLES IN POLICE ASSISTANCE RECEIVED BY YOUR COUNTRY FROM OTHER COUNTRIES, IN PRE TRIAL INVESTIGATIONS ON TRANSNATIONAL ORGANISED CRIME, AND SUGGESTIONS TO OVERCOME THEM. This Section aims at understanding existing obstacles to police assistance received by your country from other countries in pre trial investigations, and at collecting suggestions to overcome them.

SECTION 7. ASSISTANCE IN PRE TRIAL INVESTIGATIONS ON TRANSNATIONAL ORGANISED CRIME LED BY THE PROSECUTORS/INVESTIGATING JUDGES. This Section aims at understanding how co-operation among prosecutors/investigating judges is working in transnational organised crime cases. It is organised as follows:

- (7.1) National legislative framework regulating assistance
- (7.2) Training of prosecutors/investigating judges
- (7.3) Computer equipment
- (7.4) Assistance through a national centralised authority
- (7.5) Assistance through direct contact
- (7.6) Assistance through international and regional organisations

SECTION 8. OBSTACLES TO ASSISTANCE IN JUDICIAL ASSISTANCE RECEIVED BY YOUR COUNTRY FROM OTHER COUNTRIES IN PRE TRIAL INVESTIGATIONS ON TRANSNATIONAL ORGANISED CRIME, AND SUGGESTIONS TO OVERCOME THEM. This Section aims at understanding existing obstacles in judicial assistance received by your country from other countries in pre trial investigations, and at collecting suggestions to overcome them.

SECTION 9. DATA PROTECTION RULES. This Section aims at understanding how personal data are handled by prosecution offices and law enforcement agencies. It is organised as follows:

- (9.1) Legislative framework regulating the protection of personal data
- (9.2) Supervisory authority

- (9.3) Transborder flows of personal data
- (9.4) Treatment of personal data by law enforcement agencies/prosecution offices

Please note that, with some limited exceptions, this questionnaire has been entirely drafted in a 'YES-NO' format, or with a list of possible answers, in order to allow a quick response.

We would like to remind you that the questionnaire can be filled by electronic means by double clicking on the answer(s) you wish to tick and then choose the option 'select' (a cross should automatically appear in the box).

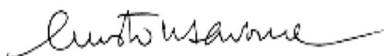
We would be grateful if you could provide us with your answer no later than on the 29th of September.

For any further inquiries and to send in your answers, please contact:

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Thanking you in advance for your kind co-operation, I remain

Yours sincerely



Ernesto U. Savona
Director of Transcrime

SECTION 1. ORGANISED CRIME SITUATION

Please note that in the context of this questionnaire, the term 'organised criminal group'⁷⁸⁰ means:

- a structured group⁷⁸¹ of three or more persons,
- existing for a period of time and
- acting in concert with the aim of committing one or more serious crimes⁷⁸² or offences established in accordance with the 2000 United Nations Convention against Transnational Organised Crime,
- in order to obtain, directly or indirectly, a financial or other material benefit.

(1.1) ORGANISED CRIMINAL GROUPS ACTIVE IN THE COUNTRY

1.1.1 How many organised criminal groups operate in your country?

1 – 10	<input type="checkbox"/>
10 – 20	<input type="checkbox"/>
20 – 30	<input type="checkbox"/>
30 – 40	<input type="checkbox"/>
40 – 50	<input type="checkbox"/>
More than 50	<input type="checkbox"/>

1.1.2 How many members do those criminal groups have on average?

1 – 10	<input type="checkbox"/>
10 – 20	<input type="checkbox"/>
20 – 30	<input type="checkbox"/>
30 – 40	<input type="checkbox"/>
40 – 50	<input type="checkbox"/>

⁷⁸⁰ See the 2000 United Nations Convention against Transnational Organised Crime, Article 2(a).

⁷⁸¹ The term 'structured group' means a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure; see the 2000 United Nations Convention against Transnational Organised Crime, Article 2(c).

⁷⁸² The term 'serious crime' shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty; see the 2000 United Nations Convention against Transnational Organised Crime, Article 2(b).

More than 50	<input type="checkbox"/>
--------------	--------------------------

(1.2) COMPOSITION OF THE CRIMINAL GROUPS

1.2.1 Are the groups operating in your country mainly formed by nationals or by non-nationals?

Only nationals	<input type="checkbox"/>
Only non-nationals	<input type="checkbox"/>
Nationals and non-nationals	<input type="checkbox"/>

1.2.1.(1) In case the groups are also formed by non-nationals or only by non nationals, what is the nationality of the non national members?

1.2.1.(2) In case the groups are composed only by non-nationals, do these foreign groups operate autonomously in the territory of your country or do they co-operate with groups composed by nationals?

Autonomously	<input type="checkbox"/>
In co-operation with nationals	<input type="checkbox"/>

(1.3) STRUCTURE OF THE CRIMINAL GROUPS

1.3.1 How would you define the structure of the criminal groups operating in your country? (please tick all the relevant answers)

Mostly hierarchical ⁷⁸³	<input type="checkbox"/>
Mostly horizontal ⁷⁸⁴	<input type="checkbox"/>
Mostly 'on a project' basis ⁷⁸⁵	<input type="checkbox"/>
Not Known	<input type="checkbox"/>

(1.4) GEOGRAPHIC SCOPE AND TRANSNATIONAL LINKS OF THE ORGANISED CRIMINAL GROUPS

1.4.1 Please specify if the groups operate mainly on a national or transnational scale:

Mainly on a national scale	<input type="checkbox"/>
Mainly on a transnational scale	<input type="checkbox"/>

⁷⁸³ 'In the hierarchical structure different levels of organisation can be recognised, in most cases three or four (typically, reference is made to top, middle and bottom level). The top level consists of leaders, supported by a network of specialists with advisory functions. The middle level is responsible, with a certain degree of autonomy, for carrying out single offences or criminal projects. The concrete commission of criminal offences is to be found at the bottom level of the organisation. Membership at this level is bound to be fluid, or variable, according to current needs of the group, opportunities, and the current situation'. See Council of Europe, European Committee on Crime Problems, Group of specialists on criminal law and criminological aspects of organised crime, *Report on the Organised Crime Situation in Council of Europe Member States - 1999*, p. 7.

⁷⁸⁴ In a horizontal structure centralised leadership is understood to be lacking or weak, indicating that links between 'middle level' operators do exist but are not co-ordinated and controlled by top level actors, organisers or financiers. Middle level operators could more accurately be denominated as group or even project leaders. Ibidem, p. 7.

⁷⁸⁵ This third category refers to groups operating in loosely knit networks of individuals, where criminal operations are typically developed and carried out on a 'project' basis. In this third perspective, even the group leaders may exchange roles with other group members, according to the needs of each criminal project. Then, the subdivision into 'leaders' and 'bottom level' participants emerges on an ad hoc basis, which each time depends on the situation, abilities, strengths and weaknesses of each group member. Ibidem, p. 8.

1.4.1.(1) In case the groups operate mainly on a transnational scale, please list the foreign countries in which they operate (please tick all the relevant answers):

Non EU countries		EU countries	
<input type="checkbox"/>	Albania	<input type="checkbox"/>	Austria
<input type="checkbox"/>	Bulgaria	<input type="checkbox"/>	Belgium
<input type="checkbox"/>	Bosnia and Herzegovina	<input type="checkbox"/>	Denmark
<input type="checkbox"/>	Croatia	<input type="checkbox"/>	Finland
<input type="checkbox"/>	Czech republic	<input type="checkbox"/>	France
<input type="checkbox"/>	FR of Macedonia	<input type="checkbox"/>	Germany
<input type="checkbox"/>	FR Yugoslavia	<input type="checkbox"/>	Greece
<input type="checkbox"/>	Hungary	<input type="checkbox"/>	Ireland
<input type="checkbox"/>	Moldova	<input type="checkbox"/>	Italy
<input type="checkbox"/>	Poland	<input type="checkbox"/>	Luxembourg
<input type="checkbox"/>	Romania	<input type="checkbox"/>	The Netherlands
<input type="checkbox"/>	Slovakia	<input type="checkbox"/>	Portugal
<input type="checkbox"/>	Slovenia	<input type="checkbox"/>	Spain
<input type="checkbox"/>	Turkey	<input type="checkbox"/>	Sweden
<input type="checkbox"/>	Others_____	<input type="checkbox"/>	United Kingdom

1.4.2 Do the organised crime groups co-operate with each other?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

1.4.3 Do the groups co-operate with organised criminal groups based abroad?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO (go to question n. 1.5.1)

1.4.3.(1) If you answered YES to question n. 1.4.3, please specify in which countries these groups are based (please tick all the relevant answers):

	Non EU countries		EU countries
<input type="checkbox"/>	Albania	<input type="checkbox"/>	Austria
<input type="checkbox"/>	Bulgaria	<input type="checkbox"/>	Belgium
<input type="checkbox"/>	Bosnia and Herzegovina	<input type="checkbox"/>	Denmark
<input type="checkbox"/>	Croatia	<input type="checkbox"/>	Finland
<input type="checkbox"/>	Czech republic	<input type="checkbox"/>	France
<input type="checkbox"/>	FR of Macedonia	<input type="checkbox"/>	Germany
<input type="checkbox"/>	FR Yugoslavia	<input type="checkbox"/>	Greece
<input type="checkbox"/>	Hungary	<input type="checkbox"/>	Ireland
<input type="checkbox"/>	Moldova	<input type="checkbox"/>	Italy
<input type="checkbox"/>	Poland	<input type="checkbox"/>	Luxembourg
<input type="checkbox"/>	Romania	<input type="checkbox"/>	The Netherlands
<input type="checkbox"/>	Slovakia	<input type="checkbox"/>	Portugal
<input type="checkbox"/>	Slovenia	<input type="checkbox"/>	Spain
<input type="checkbox"/>	Turkey	<input type="checkbox"/>	Sweden
<input type="checkbox"/>	Others.....	<input type="checkbox"/>	United Kingdom

(1.5) ACTIVITIES OF THE ORGANISED CRIMINAL GROUPS

1.5.1 For each of the following criminal activities please indicate those in which organised criminal groups are involved (please tick all the relevant answers):

	YES	NO
Armed robbery	<input type="checkbox"/>	<input type="checkbox"/>
Bank fraud	<input type="checkbox"/>	<input type="checkbox"/>
Child pornography	<input type="checkbox"/>	<input type="checkbox"/>
Computer crimes, including internet fraud	<input type="checkbox"/>	<input type="checkbox"/>
Drug producing	<input type="checkbox"/>	<input type="checkbox"/>
Drug trafficking	<input type="checkbox"/>	<input type="checkbox"/>
Environmental crime (e.g. illicit waste disposal)	<input type="checkbox"/>	<input type="checkbox"/>
Explosives (illegal traffic)	<input type="checkbox"/>	<input type="checkbox"/>
Forgery	<input type="checkbox"/>	<input type="checkbox"/>
Fraud	<input type="checkbox"/>	<input type="checkbox"/>
Gambling (illegal schemes)	<input type="checkbox"/>	<input type="checkbox"/>
Homicide	<input type="checkbox"/>	<input type="checkbox"/>
Illegal activities surrounding prostitution	<input type="checkbox"/>	<input type="checkbox"/>
Insurance scams	<input type="checkbox"/>	<input type="checkbox"/>
Intellectual property infringements (including counterfeiting, trade-mark and patent infringements)	<input type="checkbox"/>	<input type="checkbox"/>
Kidnapping for ransom	<input type="checkbox"/>	<input type="checkbox"/>
Loan sharking/Usury	<input type="checkbox"/>	<input type="checkbox"/>
Money laundering	<input type="checkbox"/>	<input type="checkbox"/>
Production and sale of pirate audio CDs and software	<input type="checkbox"/>	<input type="checkbox"/>
Racketeering	<input type="checkbox"/>	<input type="checkbox"/>
Smuggling of cigarettes	<input type="checkbox"/>	<input type="checkbox"/>
Smuggling of cultural artefacts	<input type="checkbox"/>	<input type="checkbox"/>
Smuggling of endangered species	<input type="checkbox"/>	<input type="checkbox"/>
Smuggling of petrol	<input type="checkbox"/>	<input type="checkbox"/>
Trafficking in human beings	<input type="checkbox"/>	<input type="checkbox"/>
Trafficking of human organs	<input type="checkbox"/>	<input type="checkbox"/>
Trafficking of nuclear material	<input type="checkbox"/>	<input type="checkbox"/>
Trafficking of weapons	<input type="checkbox"/>	<input type="checkbox"/>
Vehicle theft	<input type="checkbox"/>	<input type="checkbox"/>

Vehicle trafficking	<input type="checkbox"/>	<input type="checkbox"/>
Other criminal activities (please specify) -----	<input type="checkbox"/>	<input type="checkbox"/>

1.5.2 In case the organised criminal groups of your country operate in trafficking offences, is your country a origin, transit, or destination country? (tick all the relevant answers)

	Origin	Transit	Destination
Drug trafficking	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trafficking in human beings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trafficking of human organs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trafficking of nuclear material	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trafficking of firearms	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

1.5.3 Do organised criminal groups in your country infiltrate the legitimate economy, i.e. use the proceeds from crime to manage licit activities?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO (go to question n. 2.1.1)

1.5.3.(1) If you answered YES to question n. 1.5.3, please specify the sectors of the legitimate economy that seem to be at greatest risk of infiltration by the organised criminal groups operating in you country (please tick all the relevant answers):

Real estate sector	<input type="checkbox"/>
Construction sector	<input type="checkbox"/>
Financial sector	<input type="checkbox"/>
Tourism sector	<input type="checkbox"/>
Waste disposal sector	<input type="checkbox"/>
Procurements sector (government contracts for the procurement of goods and services)	<input type="checkbox"/>
Casinos	<input type="checkbox"/>
Nightlife services (such as bars and night-club)	<input type="checkbox"/>
Legal profession (such as lawyers and notaries)	<input type="checkbox"/>
Other (please specify) -----	<input type="checkbox"/>

SECTION 2. CRIMINAL LAW

(2.1) PARTICIPATION IN A CRIMINAL ASSOCIATION

2.1.1 Does your Criminal Code/national legislation criminalise participation in a criminal association?

<input type="checkbox"/>	YES (please quote the number/name of the law/article of the Criminal Code criminalizing such a conduct and the year of enactment) ----- ----- -----
<input type="checkbox"/>	NO (go to question n.2.2.1)

2.1.1.(1) If you answered YES to question n. 2.1.1, please specify the definition of participation in a criminal association contained in your Criminal Code/national legislation:

2.1.1.(2) If you answered YES to question n. 2.1.1, please specify the sanctions for participation in a criminal association:

(2.2) WITNESSES

2.2.1 Does your legislation provide for physical protection⁷⁸⁶ of witnesses who testify concerning offences committed by organised criminal group(s)?

<input type="checkbox"/>	YES (please quote the number and year of enactment of this legislation) ----- ----- -----
<input type="checkbox"/>	NO (go to question n. 2.3.1)

2.2.2 Does your legislation provide for testimony on organised crime to be given through the use of communications technology such as video links or other adequate means, so that the safety of the witness is protected?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

(2.3) LIABILITY OF LEGAL PERSONS

2.3.1 Does your legislation provide for a specific system of liability of legal persons for their involvement in organised crime activity?

<input type="checkbox"/>	YES (please quote the number and year of enactment of this legislation and please specify if the liability of legal persons is criminal, civil or administrative) ----- ----- -----
<input type="checkbox"/>	NO

⁷⁸⁶ Physical protection includes, for example, relocating witnesses and permitting non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons.

(2.4) SEIZURE AND CONFISCATION OF THE PROCEEDS FROM CRIME

2.4.1 For which types of crime is it possible to confiscate the proceeds from crime in your country?

<input type="checkbox"/>	All crimes
<input type="checkbox"/>	All serious crimes (i.e. all those crimes typically related to organised crime)
<input type="checkbox"/>	Drug trafficking related crimes
<input type="checkbox"/>	Confiscation is not permitted (go to question n. 2.5.1)

2.4.2 Does the legal system provide for (a) the confiscation of property found to be the proceeds of a crime (*property confiscation*), or (b) the confiscation of a sum of money equal to the value of the proceeds from crime (*value confiscation*), or (c) both?

<input type="checkbox"/>	(a) Only property confiscation is admitted
<input type="checkbox"/>	(b) Only value confiscation is admitted
<input type="checkbox"/>	(c) Both are admitted

2.4.3 Does the national legislation allow a reversal of the burden of proof, so placing on the defendant the *onus* to show the legal origin of his assets in order to avoid confiscation?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

2.4.4 Is a conviction always a prerequisite for confiscation provisions to apply?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

(2.5) MONEY LAUNDERING

2.5.1 Does your legislation provide for the criminalisation of money laundering?

<input type="checkbox"/>	YES (please quote the number/name and year of enactment of this legislation)

<input type="checkbox"/>	NO

2.5.1.(1) If you answered YES to question n. 2.5.1, please specify the definition of money laundering and its sanctions contained in your Criminal Code/national legislation:

(2.6) LEGAL REFORMS

2.6.1 Are any legal reforms that pertain to organised crime currently in preparation?

<input type="checkbox"/>	YES (please specify briefly) ----- ----- -----
<input type="checkbox"/>	NO

(2.7) DRUG TRAFFICKING

2.7.1 Does your legislation provide for the criminalisation of drug trafficking?

<input type="checkbox"/>	YES (please quote the number/name and year of enactment of this legislation) ----- ----- -----
<input type="checkbox"/>	NO

2.7.1.(1) If you answered YES to question n. 2.7.1, please specify the definition of drug trafficking and its sanctions contained in your Criminal Code/national legislation:

(2.8) TRAFFICKING IN HUMAN BEINGS

2.8.1 Does your legislation provide for the criminalisation of trafficking in human beings?

<input type="checkbox"/>	YES (please quote the number/name and year of enactment of this legislation) ----- ----- -----
<input type="checkbox"/>	NO

2.8.1.(1) If you answered YES to question n. 2.7.1, please specify the definition of trafficking in human beings and its sanctions contained in your Criminal Code/national legislation:

SECTION 2-BIS CRIMINAL PROCEDURE

(2-BIS.1) CRIMINAL JUSTICE SYSTEM

2-bis.1.1 Which of the following subjects is entitled to make an application for a criminal prosecution⁷⁸⁷?

	YES	NO
Only public authorities	<input type="checkbox"/>	<input type="checkbox"/>
Only private persons (e.g. victims of the crime and/or their lawyers)	<input type="checkbox"/>	<input type="checkbox"/>
Both public authorities and private persons	<input type="checkbox"/>	<input type="checkbox"/>

⁷⁸⁷ In the context of this questionnaire a subject 'entitled to make an application for a criminal prosecution' is who can ask to the competent authority to prosecute a person on the basis of the results of his/her investigation.

2-bis.1.2 Which of the following features characterize the criminal procedure in your country?

	YES	NO
Secrecy of the criminal trial proceedings	<input type="checkbox"/>	<input type="checkbox"/>
Publicity of the criminal trial proceedings	<input type="checkbox"/>	<input type="checkbox"/>
Possibility of cross-examination of witnesses	<input type="checkbox"/>	<input type="checkbox"/>
Criminal proceedings mainly written	<input type="checkbox"/>	<input type="checkbox"/>
Criminal proceedings mainly oral	<input type="checkbox"/>	<input type="checkbox"/>
Burden of proof mainly on the accused person	<input type="checkbox"/>	<input type="checkbox"/>
Burden of proof mainly on the public prosecutor	<input type="checkbox"/>	<input type="checkbox"/>
Presence of 'alternative means of concluding a trial/criminal proceeding' ⁷⁸⁸	<input type="checkbox"/>	<input type="checkbox"/>

(2-BIS.2) SEARCH AND MEANS OF EVIDENCE

2-bis.2.1 Which of the following subjects can search for and bring evidence in the proceedings (please tick the relevant answers)?

	YES	NO
Investigative judges	<input type="checkbox"/>	<input type="checkbox"/>
Prosecutors	<input type="checkbox"/>	<input type="checkbox"/>
Private persons (e.g. victims of the crime and/or their lawyers)	<input type="checkbox"/>	<input type="checkbox"/>
Others	<input type="checkbox"/>	<input type="checkbox"/>

2-bis.2.2 Does a witness/accused person have to repeat his/her deposition in front of the adjudicating judge in order for the deposition to become means of evidence?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

⁷⁸⁸ In the context of this questionnaire 'alternative means of concluding a trial/criminal proceeding' include, for example, the possibility of reducing the sentence in view of cooperation of the accused person (bargaining) or to otherwise use discretion in the prosecution of a crime.

2-bis.2.3 Can evidence be admitted even if a legal right was violated in its acquisition?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO
<input type="checkbox"/>	Sometimes

2-bis.2.4 Is any of the following means of searching evidence subject to judicial authorisation?

	YES	NO
Interceptions of private communications	<input type="checkbox"/>	<input type="checkbox"/>
Searches of places	<input type="checkbox"/>	<input type="checkbox"/>
Searches of persons	<input type="checkbox"/>	<input type="checkbox"/>
Seizure	<input type="checkbox"/>	<input type="checkbox"/>

2-bis.2.4 (1) If you answered YES to question n. 2-bis.2.4 , what is the consequence for the disregard of this authorization?

	YES	NO
Results of the search for evidence cannot be used in the trial	<input type="checkbox"/>	<input type="checkbox"/>
Results of the search for evidence can be used in the trial at certain conditions (please specify which conditions)	<input type="checkbox"/>	<input type="checkbox"/>
Results of the search for evidence can be used in the trial	<input type="checkbox"/>	<input type="checkbox"/>

(2-bis.3) CRIMINAL PROCEDURE AND JUDICIAL COOPERATION

2-bis.3.1 What are the most common reasons according to which a means of evidence coming from a foreign authority cannot be used in a trial?

Illegitimate source	<input type="checkbox"/>
Lack of necessary judicial authorizations	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>

2-bis.3.2 In the view of the answers given to this section of the questionnaire and your experience, what are the main obstacles to judicial cooperation that arise from the differences in the criminal justice system of foreign countries (please specify which countries you experienced difficulties with)?

SECTION 7. ASSISTANCE IN PRE TRIAL INVESTIGATIONS INTO TRANSNATIONAL ORGANISED CRIME LED BY PROSECUTORS/INVESTIGATING JUDGES

Please note that in the following part of the questionnaire, 'requesting state' refers to the state, which asks another country for assistance; 'requested state' refers to the state, which is asked for assistance by another country.

Please also note that in this section of the questionnaire the term 'investigations led by prosecutors/investigating judges' refers to the investigation activities undertaken under the direction of prosecutors/investigating judges, aimed at collecting evidence to be used in court in order to convict persons linked to organised crime.

(7.1) NATIONAL LEGISLATIVE FRAMEWORK REGULATING ASSISTANCE

7.1.1 Is there a law in your country, which obliges prosecutors/investigating judges to respond to foreign assistance requests?

<input type="checkbox"/>	YES (please quote the number and year of enactment of the law and, if possible, enclose the text of the law, preferably in English) ----- ----- -----
<input type="checkbox"/>	NO

7.1.1 *bis* Is there a legal provision in your code of criminal procedure, or in another piece of legislation in your country, which regulate one of the following instruments of formal judicial cooperation?

	YES Please quote the number and year of enactment of the law and, if possible, enclose the text of the law, preferably in English (e.g. Criminal Procedure Code of 1988, art. 234, '...')	NO
Extradition for trial	<input type="checkbox"/> ----- ----- -----	<input type="checkbox"/>
Extradition for sentence	<input type="checkbox"/> ----- ----- -----	<input type="checkbox"/>
Execution of foreign sentences	<input type="checkbox"/> ----- ----- -----	<input type="checkbox"/>
Transfer of prisoners	<input type="checkbox"/> ----- ----- -----	<input type="checkbox"/>
Rogatory letters	<input type="checkbox"/> ----- ----- -----	<input type="checkbox"/>
Other provisions, which deals with the trial and custody of individual suspects or convicted persons	<input type="checkbox"/> ----- ----- -----	<input type="checkbox"/>

7.1.2 Is dual criminality required in order for your country to provide assistance to the requesting State?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

7.1.3 Did your State sign any bilateral/multilateral agreement, which regulates international judicial assistance in criminal matters?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO (go to question n. 7.2.1)

7.1.3.(1) If you answered YES to question n. 7.1.3, with which of the following countries did your country sign bilateral/multilateral agreements, and in which date were the agreements enacted? (please tick all the relevant answers)

	Non EU countries		EU countries
<input type="checkbox"/>	Albania	<input type="checkbox"/>	Austria
<input type="checkbox"/>	Bulgaria	<input type="checkbox"/>	Belgium
<input type="checkbox"/>	Bosnia and Herzegovina	<input type="checkbox"/>	Denmark
<input type="checkbox"/>	Croatia	<input type="checkbox"/>	Finland
<input type="checkbox"/>	Czech republic	<input type="checkbox"/>	France
<input type="checkbox"/>	FR of Macedonia	<input type="checkbox"/>	Germany
<input type="checkbox"/>	FR Yugoslavia	<input type="checkbox"/>	Greece
<input type="checkbox"/>	Hungary	<input type="checkbox"/>	Ireland
<input type="checkbox"/>	Moldova	<input type="checkbox"/>	Italy
<input type="checkbox"/>	Poland	<input type="checkbox"/>	Luxembourg
<input type="checkbox"/>	Romania	<input type="checkbox"/>	The Netherlands
<input type="checkbox"/>	Slovakia	<input type="checkbox"/>	Portugal
<input type="checkbox"/>	Slovenia	<input type="checkbox"/>	Spain
<input type="checkbox"/>	Turkey	<input type="checkbox"/>	Sweden
<input type="checkbox"/>	Others.....	<input type="checkbox"/>	United Kingdom

7.1.3.(2) On the basis of your experience, please specify which of the above mentioned bilateral/multilateral agreements have been most frequently used in practice and which of them have never been used.

7.1.4 In case your country ratified one of the following international instruments of judicial cooperation, on a scale from 0 to 3 (where 0=never used, 1=rarely used, 2=averagely used, 3=often used) please indicate how often in your experience these instruments are used.

European Convention on Extradition (1957 COE - ETS 024)	0 <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
First additional Protocol to the European Convention on Extradition (1975 COE - ETS 086)	0 <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
Second additional Protocol to the European Convention on Extradition (1975 COE - ETS 098)	0 <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
United Nations Convention against Illicit Traffic of Drugs and Psychotropic Substances (1988)	0 <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
Criminal Law Convention against Corruption (1998 COE - ETS 173)	0 <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990, COE - ETS 141)	0 <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
European Convention on Mutual Assistance in Criminal Matters (1959 COE - ETS 030)	0 <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
Additional Protocol to the Convention (1978 COE - ETS 099)	0 <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
Others (please specify)	0 <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>

7.1.5 Which of the following measures are used in your country to implement mutual legal assistance in criminal matters (please tick all the relevant answers)?

Adoption of the principle of ' <i>Ne bis in idem</i> '	<input type="checkbox"/>
Adoption of procedures coherent with those of the requesting State	<input type="checkbox"/>
Recognition of confiscation decisions	<input type="checkbox"/>
Recognition of non custodial supervision measures	<input type="checkbox"/>
Recognition of decision to prosecute	<input type="checkbox"/>
Recognition of prison sentences	<input type="checkbox"/>

(7.2) TRAINING OF PROSECUTORS/INVESTIGATING JUDGES

7.2.1 On a scale from 0 to 3 (where 0=no training, 1=low level of training, 2=medium level of training and 3=high level of training), how would you evaluate the level of training of prosecutors/investigating judges in investigating transnational organised crime?

0	1	2	3
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

7.2.2 Are there joint seminars or specialisation courses organised with the purpose of training prosecutors/investigating judges of different countries in the field of Transnational organised crime?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

(7.3) COMPUTER EQUIPMENT

7.3.1 Do all prosecutors/investigating judges have a computer network (intranet) and an official e-mail account in their office?

	YES	NO
Computer network (intranet) (Few exceptions)	<input type="checkbox"/>	<input type="checkbox"/>
Official e-mail account	<input type="checkbox"/>	<input type="checkbox"/>

(7.4) ASSISTANCE THROUGH A NATIONAL CENTRALISED AUTHORITY

7.4.1 Which is/are the central authority(ies) through which prosecutors/investigating judges in your country channel requests for international assistance addressed to a foreign requested State? (tick all the relevant answers)

<input type="checkbox"/>	Ministry of Justice
<input type="checkbox"/>	Prosecutor general's office
<input type="checkbox"/>	Other authority (please specify).....

7.4.2 Does the Ministry of Justice/Prosecutor General's Office have a department/unit uniquely devoted to international judicial co-operation?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

7.4.3 Does the Ministry of Justice/Prosecutor General's office have translators readily available, who can translate a request of assistance into the language of the requested State?

<input type="checkbox"/>	YES ((Please specify the languages for which translators are available for ex: German, English...)) ----- ----- -----
<input type="checkbox"/>	NO

7.4.4 On average, how long does it take to get an answer to an assistance request made to a foreign State?

<input type="checkbox"/>	Up to 1 week
<input type="checkbox"/>	Up to 2 weeks
<input type="checkbox"/>	Up to 3 weeks
<input type="checkbox"/>	Up to 1 month
<input type="checkbox"/>	Up to 2 months
<input type="checkbox"/>	More than 2 months

7.4.5 By which means are requests for assistance sent to other countries?

<input type="checkbox"/>	Mail
<input type="checkbox"/>	Fax
<input type="checkbox"/>	E-mail

7.4.6 Does a national standard form exist, that prosecutors/investigating judges use in order to ask for international assistance?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

(7.5) ASSISTANCE THROUGH DIRECT CONTACT

7.5.1 Do agreements or legislation exist, that provide for the direct co-operation of prosecutors/investigating judges in your country with prosecutors/investigating judges in other countries?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO (go to question 7.5.2)

7.5.1.(1) If you answered YES to question n. 7.5.1, please indicate the countries with which formal direct judicial co-operation is in place and the date of enactment of the legislation/agreements (please tick all the relevant answers):

	Non EU countries		EU countries
<input type="checkbox"/>	Albania	<input type="checkbox"/>	Austria
<input type="checkbox"/>	Bulgaria	<input type="checkbox"/>	Belgium
<input type="checkbox"/>	Bosnia and Herzegovina	<input type="checkbox"/>	Denmark
<input type="checkbox"/>	Croatia	<input type="checkbox"/>	Finland
<input type="checkbox"/>	Czech republic	<input type="checkbox"/>	France
<input type="checkbox"/>	FR of Macedonia	<input type="checkbox"/>	Germany
<input type="checkbox"/>	FR Yugoslavia	<input type="checkbox"/>	Greece
<input type="checkbox"/>	Hungary	<input type="checkbox"/>	Ireland
<input type="checkbox"/>	Moldova	<input type="checkbox"/>	Italy
<input type="checkbox"/>	Poland	<input type="checkbox"/>	Luxembourg
<input type="checkbox"/>	Romania	<input type="checkbox"/>	The Netherlands
<input type="checkbox"/>	Slovakia	<input type="checkbox"/>	Portugal
<input type="checkbox"/>	Slovenia	<input type="checkbox"/>	Spain
<input type="checkbox"/>	Turkey	<input type="checkbox"/>	Sweden
<input type="checkbox"/>	Others.....	<input type="checkbox"/>	United Kingdom

7.5.2 During the course of an investigation do prosecutors/investigating judges enter into direct contact with prosecutors/investigating judges of other countries, whether of a formal agreement exists or not?

<input type="checkbox"/>	YES (please list the countries with which it occurs)

<input type="checkbox"/>	NO

7.5.3 Does your country post liaison magistrates to foreign countries, who help prosecutors/investigating judges from your country in identifying competent foreign counterparts to whom they can address a request for assistance?

<input type="checkbox"/>	YES
--------------------------	-----

<input type="checkbox"/>	NO (please specify how prosecutors/investigating judges of your country identify the name of the competent counterpart to whom they can address a request for assistance)

7.5.3 (1) If you answered YES to question n. 7.5.3, please specify which of the following activities they fulfil (tick all the relevant answers):

<input type="checkbox"/>	They provide direct links between prosecutors/investigative judges and foreign judicial and prosecution authorities
<input type="checkbox"/>	They help directly in the exchange of information and statistics
<input type="checkbox"/>	They help to enhance the mutual understanding of judicial systems
<input type="checkbox"/>	They carry out diplomatic activities
<input type="checkbox"/>	They carry out individual core work (mutual legal assistance, prisoner transfer, etc.)

7.5.4 Do prosecutors/investigating judges in your country have translators readily available, who translate the official documents coming from a foreign country in answer to an assistance request?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

7.5.5 If prosecutors/investigating judges in your country are directly contacted by prosecutors/investigating judges of another country, asking for assistance, but they have not jurisdiction to implement that request, are they obliged by national law to forward the request to their competent colleagues?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

7.5.6 If a prosecutor/investigating judge of a foreign country asks for witnesses or experts to give evidence on oath in your country, is the competent prosecutor/investigating judge in your country obliged to summon the witnesses and the experts?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

7.5.7 If a prosecutor/investigating judge of a foreign country asks for an extract of bank records or criminal records, is the competent prosecutor/investigating judge in your country obliged to transfer the requested material to the foreign prosecutor/investigating judge?

	YES	NO
Bank records	<input type="checkbox"/>	<input type="checkbox"/>

Criminal records	<input type="checkbox"/>	<input type="checkbox"/>
------------------	--------------------------	--------------------------

7.5.8 If a prosecutor/investigating judge of a foreign country asks for the execution of a freezing order, of a confiscation order, or of a search warrant issued in his/her country, is the competent prosecutor/investigating judge in your country obliged to execute such an order?

	YES	NO
Freezing order	<input type="checkbox"/>	<input type="checkbox"/>
Confiscation order	<input type="checkbox"/>	<input type="checkbox"/>
Search warrant	<input type="checkbox"/>	<input type="checkbox"/>

7.5.9 If a prosecutor/investigating judge of a foreign country asks a prosecutor/investigating judge of your country for the use of the following means of investigation in your country, is the prosecutor/investigating judge of your country obliged to provide assistance?

	YES (Please specify, if needed, the conditions under which this is possible (e.g. existence of a MLAT))	NO
1. Interception of telephone conversations	<input type="checkbox"/>	<input type="checkbox"/>
2. Interception of fax transmissions	<input type="checkbox"/>	<input type="checkbox"/>
3. Interception of Internet transmissions	<input type="checkbox"/>	<input type="checkbox"/>
4. Audio or video recording of events taking place on private premises	<input type="checkbox"/>	<input type="checkbox"/>
5. Undercover operations	<input type="checkbox"/>	<input type="checkbox"/>
6. Use of storefronts by investigative units	<input type="checkbox"/>	<input type="checkbox"/>
7. Covert methods such as controlled delivery	<input type="checkbox"/>	<input type="checkbox"/>

7.5.10 Which of the following practices are in use in your country?

1. 'Urgency' marking in order to set priority among the different requests for assistance.	<input type="checkbox"/>
2. Acknowledgement of the request for assistance by another country and provision of an estimate for the time necessary to carry out the request	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/> ----- ----- -----

(7.6) ASSISTANCE THROUGH INTERNATIONAL AND REGIONAL ORGANISATIONS

7.6.5 On a scale from 0 to 3 (where 0=no cooperation, 1=low level of cooperation, 2=medium level of cooperation and 3=high level of cooperation) please indicate the degree of cooperation between your country and the European Judicial Network in the following areas:

	0	1	2	3
Provision of legal and practical information on mutual legal assistance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Provision of direct contacts with local law enforcement authorities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Provision of direct contacts with local prosecution offices	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exchange of information on investigative procedures and crime prevention methods	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Training initiatives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Advice and support in individual investigations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/> ----- -----	<input type="checkbox"/> ----- -----	<input type="checkbox"/> ----- -----	<input type="checkbox"/> ----- -----

7.6.6 On a scale from 0 to 3 (where 0=no cooperation, 1=low level of cooperation, 2=medium level of cooperation and 3=high level of cooperation) please indicate the degree of cooperation between your country and Eurojust in the following areas:

	0	1	2	3
Legal advice and assistance in cross-border cases	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Inputs to national authorities to take steps and initiate investigations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Direct help in the letters of rogatory	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Provision of direct contacts with local law enforcement authorities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Provision of direct contacts with local prosecution offices	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exchange of information on investigative procedures and crime prevention methods	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Advice and support in individual investigations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	-----	-----	-----	-----
	-----	-----	-----	-----

SECTION 8. OBSTACLES TO JUDICIAL ASSISTANCE RECEIVED BY YOUR COUNTRY FROM OTHER COUNTRIES IN PRE TRIAL INVESTIGATIONS INTO TRANSNATIONAL ORGANISED CRIME, AND SUGGESTIONS TO OVERCOME THEM

8.1 According to your experience, please tick the elements you consider the most significant obstacles to judicial assistance received by your country from other countries in pre trial investigations into transnational organised crime:

<input type="checkbox"/>	Lack of response to requests for assistance
<input type="checkbox"/>	Delay of response to requests for assistance
<input type="checkbox"/>	Lack of recognition of orders (e.g. arrest warrants) issued by prosecutors/investigating judges of another country
<input type="checkbox"/>	Lack of harmonisation in legislation
<input type="checkbox"/>	Difficulty in identifying the foreign competent counterpart to whom the assistance request should be addressed
<input type="checkbox"/>	Language problems
<input type="checkbox"/>	Lack of human resources
<input type="checkbox"/>	Lack of financial resources
<input type="checkbox"/>	Lack of training
<input type="checkbox"/>	Other (please specify) ----- ----- -----

8.2 Please write below your suggestions for the improvement of judicial assistance received by your country from other countries in pre trial investigations into transnational organised crime:

If a law exists in your country, which obliges prosecutors/investigating judges to respond to foreign assistance requests, please enclose the text of the law, if possible in English.

If your country has ratified the European Convention on Mutual Assistance in Criminal Matters (Council of Europe, 1959) and its Additional Protocols (1978 and 2001), please enclose the ratification laws, if possible in English.

SECTION 9. DATA PROTECTION RULES

Please note that, in the context of this questionnaire, the term ‘personal data’ means any information related to an identified or identifiable individual (‘data subject’).

(9.1) LEGISLATIVE FRAMEWORK REGULATING THE PROTECTION OF PERSONAL DATA

9.1.1 Is there a legal provision in your country that protect personal data?

<input type="checkbox"/>	YES (please quote the number and year of enactment of the law and, if possible, enclose the text of the law, preferably in English) ----- ----- -----
<input type="checkbox"/>	NO

9.1.1 (1) If you answered YES to question n. 9.1.1, do the legal provisions on personal data protection apply to the activity of law enforcement agencies/prosecution offices⁷⁸⁹?

	Law enforcement agencies	Prosecution offices
YES	<input type="checkbox"/>	<input type="checkbox"/>
NO	<input type="checkbox"/>	<input type="checkbox"/>

⁷⁸⁹ In the context of this questionnaire, the terms ‘law enforcement agencies’ and ‘prosecution offices’ indicate the institutions which respectively police officers and prosecutors work for.

9.1.2 If the legal provisions regarding data protection do not apply to the activities of law enforcement agencies/prosecution offices please specify why the exemption is granted (please tick all the relevant answers):

	Law enforcement agencies	Prosecution offices
National security	<input type="checkbox"/>	<input type="checkbox"/>
Public order	<input type="checkbox"/>	<input type="checkbox"/>
Investigative secrecy	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>	<input type="checkbox"/>
	-----	-----
	-----	-----

9.1.3 Has your country concluded any bilateral or multilateral agreements within the framework of police and judicial cooperation including specific provisions for personal data protection?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

9.1.3 (1) If you answered YES, please indicate the countries with which formal agreements are in place (tick all the relevant answers)

	Non EU countries	Date		EU countries	Date
<input type="checkbox"/>	Albania		<input type="checkbox"/>	Austria	
<input type="checkbox"/>	Bulgaria		<input type="checkbox"/>	Belgium	
<input type="checkbox"/>	Bosnia and Herzegovina		<input type="checkbox"/>	Denmark	
<input type="checkbox"/>	Croatia		<input type="checkbox"/>	Finland	
<input type="checkbox"/>	Czech republic		<input type="checkbox"/>	France	
<input type="checkbox"/>	FR of Macedonia		<input type="checkbox"/>	Germany	
<input type="checkbox"/>	FR Yugoslavia		<input type="checkbox"/>	Greece	
<input type="checkbox"/>	Hungary		<input type="checkbox"/>	Ireland	
<input type="checkbox"/>	Moldova		<input type="checkbox"/>	Italy	
<input type="checkbox"/>	Poland		<input type="checkbox"/>	Luxembourg	
<input type="checkbox"/>	Romania		<input type="checkbox"/>	The Netherlands	
<input type="checkbox"/>	Slovakia		<input type="checkbox"/>	Portugal	
<input type="checkbox"/>	Slovenia		<input type="checkbox"/>	Spain	
<input type="checkbox"/>	Turkey		<input type="checkbox"/>	Sweden	
<input type="checkbox"/>	Others -----		<input type="checkbox"/>	United Kingdom	

9.1.4 Does any formal agreement exist with Europol (the European Police Office) regarding the transmission of personal data by/to Europol?

	Data by EUROPOL	Data to EUROPOL
YES	<input type="checkbox"/>	<input type="checkbox"/>
NO	<input type="checkbox"/>	<input type="checkbox"/>

(9.2) SUPERVISORY AUTHORITY

9.2.1 Is there a supervisory authority in your State that deals with the protection of personal data?

<input type="checkbox"/>	YES (please specify the name) -----
<input type="checkbox"/>	NO

9.2.1 (1) If you answered YES to question n. 9.2.1, please indicate the powers and functions of the supervisory authority (please tick all the relevant answers):

<input type="checkbox"/>	Power of investigation
<input type="checkbox"/>	Power to bring violations of data protection rules to the attention of competent judicial authorities
<input type="checkbox"/>	Powers to start legal proceedings
<input type="checkbox"/>	Other

9.2.1 (2) If you answered YES to question n. 9.2.1, is this supervisory authority (please tick the relevant answer)⁷⁹⁰:

<input type="checkbox"/>	Dependent (please specify on which entity – government or other – the authority is dependent) ----- -----
<input type="checkbox"/>	Independent

⁷⁹⁰ In the context of this questionnaire, the supervisory authority is to be considered *independent* only when all of the following elements are present:

- no external intervention (or very limited intervention) in the methods used to appoint its members;
- appropriate duration of exercise of authority's functions;
- allocation of sufficient resources;
- decision making is not subject to external orders or injunctions.

If one or more of these conditions are not fulfilled, the authority has to be considered dependent. See Council of Europe, Explanatory Report to the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and transborder data flows, adopted on 23 May 2001.

(9.3) TRANSBORDER FLOWS OF PERSONAL DATA

9.3.1 Are law enforcement agencies/prosecution offices allowed to transfer personal data⁷⁹¹ to other States that are not Party to the 1981 Convention for the protection of Individuals with regard to Automatic Processing of Personal Data (COE – ETS 108)?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

9.3.1(1) If you answered YES to question n. 9.3.1, is this transfer regulated by legal provisions?

<input type="checkbox"/>	YES (please quote the number and year of enactment and, if possible, enclose the text of the provision, preferably in English)
<input type="checkbox"/>	NO

9.3.2 In your experience, has a request for assistance in a criminal investigation, *originating from States that are not Party to the 1981 Convention*, been refused because the recipient State could not guarantee:

<input type="checkbox"/>	Data quality ⁷⁹²
<input type="checkbox"/>	Confidentiality of communications
<input type="checkbox"/>	Others (please specify) ----- ----- -----

⁷⁹¹ In the field of police/judicial cooperation, personal data may include both personal data related to ongoing criminal proceedings and personal data related to past criminal convictions. See Council of Europe, *Report on the Impact of Data Protection Principles on Judicial Data in Criminal Matters including in the framework of Judicial Cooperation in Criminal Matters (2002)*, available on the website of the Council of Europe (<http://www.coe.int>).

⁷⁹² For the purposes of this questionnaire, the term ‘data quality’ means data obtained and processed fairly and lawfully, stored only for specified and legitimate purposes, adequate, accurate and kept up to date. See the 1981 Convention for the protection of Individuals with regard to Automatic Processing of Personal Data (COE – ETS 108).

(9.4) TREATMENT OF PERSONAL DATA BY LAW ENFORCEMENT AGENCIES/PROSECUTION OFFICES

9.4.1 Are law enforcement agencies/prosecution offices duty-bound to make sure that personal data are not further processed in a way which is incompatible with the purposes for which the data were collected?

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

9.4.2 Are law enforcement agencies/prosecution offices the duty-bound to apply security measures⁷⁹³ to the data collected?

<input type="checkbox"/>	YES (please specify which security measures are applied to the data) ----- ----- -----
<input type="checkbox"/>	NO

9.4.3 Who is ultimately responsible in your country for the application of the data protection provisions during the investigation of a crime conducted by police/prosecutors?

<input type="checkbox"/>	The head of the relevant office
<input type="checkbox"/>	Individual judges/prosecutors
<input type="checkbox"/>	Members of the administrative staff
<input type="checkbox"/>	Others (please specify)

⁷⁹³ For the purposes of this questionnaire, the term 'security measures' means any technical and organisational device, which is designed to ensure a level of security appropriate to the risks implied by the processing of data and the nature of the personal data to be protected. In particular, these measures should prevent any unauthorised disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and all other unlawful forms of processing. See Directive 95/46/EC of the European Parliament and the Council of 24 October 1995, and Regulation No. 45/2001 of the European Parliament and the Council of 18 December 2001.

SECTION 10. GOOD PRACTICES

In the context of the Final Report the term 'good practices' will be used in a broader sense to encompass 'all the organisational and structural measures adopted in order to apply the formal rules of judicial and police cooperation in the smoothest way possible and in order to achieve the objectives of that cooperation'. They may consist in structures (i.e. organisations dealing with international or regional cooperation) and methods (i.e. cooperation protocols, arrangements in TOC investigations for police officers and magistrates, investigative tools, modus operandi in TOC cases), which in the experience of the practitioners have led to positive results in the fight against TOC within the legal framework.

Some examples of good practices are provided below. We kindly ask you to answer the questions by ticking the boxes on the right of the good practices enacted in your country. Please feel free to add any other good practices present in your country to the list.

- acknowledgement of all requests and written enquiries concerning the execution of requests;
- providing the requesting authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing the request;
- setting priority to requests which have clearly been marked 'urgent` by the requesting authority;
- giving reports explaining the difficulty in carrying out the request and where possible offering to consider jointly with the requesting authority how the difficulty might be overcome;
- explaining when the assistance requested is likely to be provided;
- explaining the reasons for the urgency or deadline;
- ensuring that requests are submitted in compliance with the relevant treaty or other international arrangements;
- providing the requested authorities with the name and contact details, including telephone and fax numbers, of the authority and, if possible, the person responsible for issuing the request;
- compliance with the formalities and procedures expressly indicated by the requesting member state;
- direct sending of procedural documents;
- use of fax and e-mail to send requests;
- spontaneous exchange of information;
- hearing by video or telephone conference of witnesses and experts;
- use of controlled deliveries;
- use of joint investigative teams;
- use of covert investigations;
- interception of communications;

- the protection of personal data provided in response to a request;
- establishment of common criminal databases;
- liaison officers and magistrates posted in the countries of the Region and in EU member states, or in the organisations that are relevant for police and judicial cooperation (Interpol, Eurojust, Europol, SECI Center, etc.);
- joint operational meetings;
- direct channels of communication;
- interagency coordination protocols;
- other:

ANNEX 3.

CONTACT DETAILS OF NATIONAL AUTHORITIES DEALING WITH INTERNATIONAL COOPERATION

ALBANIA

PROSECUTOR GENERAL'S OFFICE

Foreign Relations Directorate

Tel +355 4 235232

Fax+355 4 235232

Email V_ardi@hotmail.com; a_visha@pp.gov.al

Contact person: Mr. Ardian Visha

MINISTRY OF PUBLIC ORDER

National Central Bureau of Interpol – Directorate of Criminal Police

Tel +355 4 362793

Fax +355 4 365160

Email arba_al@yahoo.com; intmrp@albanaonline.net

Contact person: Artan BAJRAKTARI

BOSNIA AND HERZEGOVINA

MINISTRY OF SECURITY

Interpol NCB and SIPA are part of the Ministry of Security and deal with international cooperation.

For both the units it is possible to refer to the following switchboard number:

Tel 00387 (0) 33752500

BULGARIA

MINISTRY OF JUSTICE

International legal assistance

Tel: 00359 2 980 6462

Fax: 00359 2 980 9222

Email: maleva@justice.government.bg

Contact person: Ms MALEVA Vesselina, Head of department

SUPREME CASSATION PROSECUTOR'S OFFICE

International legal assistance

Tel: 00359 2 988 5895 or 00359 2 9219248

Fax : 00359 2 988 5895

Email : sledstven_gp@prb.bg

Contact person: NIKOLOVA Pavlina, Head of department

MINISTRY OF INTERIOR

International cooperation directorate

Fax : 00359 2 9803677

Email : 14@mvr.bg

Contact person : PARVANOVA Petya, Director

NSCOC

International cooperation section

Tel:00359 2 982 8610

Fax00359 2 988 52 88 or 00359 2 936 11 39

Email: int.cooperation.170@mvr.bg or 170@mvr.bg

Contact person: Mr. GLEDJARSKY Lubomir - main L.O. to SEE

CROATIA

MINISTRY OF JUSTICE

Directorate for mutual legal assistance, cooperation and human rights department
for mutual legal assistance – Section for mutual legal assistance in criminal matters

Tel. 00385 1 3710680

Fax 00385 1 3710672

Email d.kovacevic@pravosudje.hr

Contact person: Mr. DINKO KOVAČEVIĆ

HUNGARY

PROSECUTOR GENERAL'S OFFICE

Tel +36 1 332 5930

Fax +36 1 302 3114

INTERNATIONAL LAW ENFORCEMENT COOPERATION CENTER (ILECC)

Tel. +36 443 5596

Fax +36 343 1767

MOLDOVA

GENERAL PROSECUTOR'S OFFICE

Tel 373 22 22 86 36

Fax 373 22 22 86 36

Email igor_tofan@yahoo.com

Contact person: Igor Tofan, Deputy –Head of section

INTERPOL

Tel 373 22 546 236

Fax 373 22 546 235

Contact person: Valentina Litvinov

POLAND

GENERAL PROSECUTOR'S OFFICE

Department of International Relations

GENERAL HEADQUARTERS OF THE POLICE,

International Police Co-Operation Bureau

Tel. +48-22-601-2372

Fax: +48-22-6012428

ROMANIA

MINISTRY OF JUSTICE

The Department Of International Cooperation

Tel 004021 3101662

Fax004021 3101662

PROSECUTOR'S GENERAL OFFICE

Section for International Cooperation

Tel 004021 410 54 35

Fax 004021 337 47 54

Email arcdc@kappa.ro

Contact person: Angela NICOLAE, Chief prosecutor of Section

NATIONAL ANTICORRUPTION PROSECUTOR'S OFFICE

The Liaison Office

Tel 004021 313 01 24

Fax004021 313 01 24

Email apetrescu@pna.ro

Contact person: Adina PETRESCU – Chief prosecutor of Office

MINISTRY OF AMINISTRATION AND INTERIOR

Romanian National Focal Point

Tel +40 21 410 07 32

Fax +40 21 312 36 00

Email pnf@mai.gov.ro

SERBIA AND MONTENEGRO

MINISTRY OF JUSTICE

Department for International Relations of the Ministry of Justice of the Republic of Serbia

Tel. ++381 11 363 1775

Email : a.popovic@mpravde.sr.gov.yu

Contact person : Ms. Alexandra Popovic

SLOVAKIA

PROSECUTOR'S GENERAL OFFICE

International Department

Tel.: +421 2 59 53 25 54

Fax: +421 2 52 92 23 08

Email: jozef.szabo@genpro.gov.sk; Alica.kovacova@genpro.gov.sk

Contact person: Jozef Szabo

MINISTRY OF INTERIOR

Prezídium Policajného zboru

Úrad medzinárodnej policajnej spolupráce

Tel.: +421961050090

Fax: +421 961059099

Email palov@minv.sk; barath@minv.sk

Contact person: Jaroslav Paľov

SLOVENIA

MINISTRY OF INTERIOR

Criminal Investigation Police

International Police Cooperation Section

Tel: 0038612510488

Fax: 0038612517516

Email: interpol.ljubljana@policija.si

Contact person: Officer on duty

THE CZECH REPUBLIC

INTERPOL NCB

Tel 420 974 834 494

Fax 420 974 834 716

Email interpol@mvcr.cz

Contact person: Mr Seidl

THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

MINISTRY OF JUSTICE

Tel 00389 2 3106 534

Fax 00389 2 3226 975

Contact person :Mrs. Valentina Shaurek

GENERAL PUBLIC PROSECUTION OFFICE OF THE REPUBLIC OF MACEDONIA

Tel. 00389 2 3136 218

Fax 00389 2 3229 314

Contact person:Mr. Ljubomir Jovevski, deputy public prosecutor of the General Public Prosecution Office of the Republic of Macedonia.

Mobile 00 389 70 49 00 48

e-mail : jilievski@zjorm.org.mk

TURKEY

INTERPOL

National Unit

Fax:+90 312 466 90 21

Email: interpol-db@egm.gov.tr

ORGANISED CRIME DEPT OF TURKISH NATIONAL POLICE

Tel:+90 312 412 70 70

Fax: +90 312 417 06 21

Web: <http://www.kom.gov.tr>