

A STUDY ON

*CRIME PROOFING - EVALUATION OF CRIME RISK
IMPLICATIONS OF THE EUROPEAN COMMISSION'S
PROPOSALS COVERING A RANGE OF POLICY AREAS*

(Contract No. DG.JAI-D2/2004/05)

MANUAL

27 July 2006



UNIVERSITÀ DEGLI STUDI
DI TRENTO

Administration & Research
Via Inama, 5 - 38100 Trento (Italy)
Tel: +39-0461-882304
Fax: +39-0461-882303
transcrime@transcrime.unitn.it

www.transcrime.unitn.it



UNIVERSITÀ CATTOLICA
DEL SACRO CUORE

Research
Largo Gemelli, 1 - 20123 Milano (Italy)
Tel: +39-02-72343716
Fax: +39-02-72343721
transcrime@unicatt.it



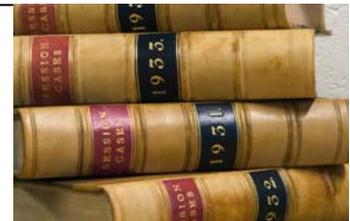
INTRODUCTION.

The core idea underlying this manual is that legislation may have criminogenic effects. This means that legislation may inadvertently produce opportunities for crime. Reducing such opportunities will help to reduce crime and its consequences in terms of costs and victims. This manual provides EU officials with simple instructions on how to identify such unintended crime risks in European Commission proposals.

The present document has been conceived as a user-friendly tool for EU officials charged with the production of new proposals of EU regulation and the related Impact assessments (IA). It aims at providing a brief description of some key concepts such as crime, crime risk and crime proofing of legislation. It explains the role of crime proofing of legislation in the EU crime prevention strategy. It presents a three-step checklist that will guide officials through a very simple assessment of any Commission proposal. It provides a step-by-step explanation of the checklist along with simple examples. It briefly describes a possible Crime Risk Assessment process to assess such risks.

This manual closely follows the experience gained from the project “A study on Crime Proofing – Evaluation of crime risk implications of the European Commission’s proposals covering a range of policy areas” (contract No. DG.JAI-D2/2004/05).





1. LEGISLATIVE CRIME PROOFING.

1.1. WHAT IS CRIME PROOFING OF LEGISLATION?

Crime proofing of legislation is a form of risk management applied to crime.¹ Its core idea is that legislation may inadvertently produce new opportunities for crime. Crime proofing belongs to the *situational crime prevention* approach, aiming at reducing opportunities for crime produced by vulnerabilities in legislation. From this perspective laws are considered for their potential criminogenic effects, i.e. the possibility of their facilitating the commission of crimes. In order to reduce such effects, *crime proofing of legislation aims at measuring existing ("ex post crime proofing") or future ("ex ante crime proofing") opportunities for crime due to legislation and at highlighting related interventions in order to proof it against crime.*

The crime proofing process consists of *two phases*:

- a) Assessment of the risk that a legislative measure may produce unintended criminal implications/consequences;
- b) Action to close the loopholes in the legislation, thereby 'proofing' it against crime.

The process has *four aims*:

- a) Identify unintended criminal implications/consequences of existing or forthcoming legislation, if present;
- b) Determine whether there is crime risk, and if so, of what crime and of what magnitude;
- c) Analyse pros and cons in terms of crime arising from each policy option;
- d) Suggest textual changes to the legislation likely to reduce the risk (either by reducing opportunities for crime or by introducing security measures that may mitigate the risk).

The present manual provides a brief and simple introduction on how to pursue the first aim of the crime proofing process.

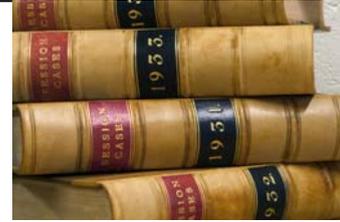
1.2. WHAT IS A CRIME RISK?

In order to effectively understand the importance of crime proofing of legislation, the concepts of crime risk and crime will be shortly explained.

Considering the criminogenic effects of legislation implies that laws might present crime opportunities that may be exploited by criminals. Such opportunities will be called crime risks.

In general, risk means *the probability, defined as the likelihood that a crime, as a negative event, will occur, and the impact, defined as the harm caused to society and individuals by such a crime.* Such an impact may come from any present or future event. In a more specific approach, every risk (R) is functional

¹ Risk management is the process of measuring, or assessing risk and then developing strategies to manage the risk.



to the probability (P) of a risky and to the expected losses/harm (H) which can be caused by event such an event:

$$R = f(P,H)$$

Such an approach to risk and risk assessment has been supported by several academic and institutional experiences. The following brief review of risk and risk assessment definitions further clarifies these concepts.

One of the first and most famous exercises in the definition (and also measurement) of organised crime risk is represented by the Australian Queensland Crime Commission (QCC). In 1999 it performed a comprehensive study on risk assessment, called Project Krystal, where risk is defined as “an assessment of the likelihood that harm might occur and its impact”².

According to the Canada Threat and Risk Assessment Working Guide risk is “the adverse effects that can result if a vulnerability is exploited or if a threat is actualised. In some contexts, a risk is the measure of the likelihood of adverse effects or the product of the likelihood and the quantified consequences”. Threat and risk assessment is defined as “a process in which the objective is to identify system assets, to identify how these assets can be compromised by threat agents, to assess the level of risk that the threat agents pose to the assets and recommend the necessary safeguards in order to mitigate effects of the threat agents”³.

Pradham and Meher define risk as “the probability of an event that has negative consequences”⁴. They argue that risk assessment is the process of identifying vulnerabilities and threats (defined as “any circumstances or events with the potential to cause harm on an information resource”⁵.

Similarly, the Risk Assessment Information System defines risk as “the product of impact of severity (consequence) and impact of likelihood probability”⁶. Risk assessment is defined as “the process of establishing information regarding acceptable levels of a risk and/or levels of risk for an individual, group, society, or the environment”⁷.

According to the Comprehensive Risk Analysis and Management Network (2004), in a broad definition risk is “the combination of the probability of a possible unwanted event and the quantity of possible damage”⁸. In a more technical sense, risk is defined as “the potential occurrence of unwanted adverse consequences to human life, health, property and/or the environment”⁹. Also according to this source, the estimation of risk is usually based on “the expectation value of the conditional probability of the event

² Queensland Crime Commission (1999), *Project Krystal – A Strategic Assessment of Organised Crime in Queensland*.

³ Government of Canada (1999), *Communications Security Establishment, Threat and Risk Assessment Working Guide*, http://www.cse-cst.gc.ca/en/knowledge_centre/gov_publications/itsg/itsg04.html.

⁴ Pradhan P.L., Meher P.K. (2004), *Risk Assessment on IT Infrastructure* http://infosecwriters.com/text_resources/pdf/Risk_asst-Infra.pdf.

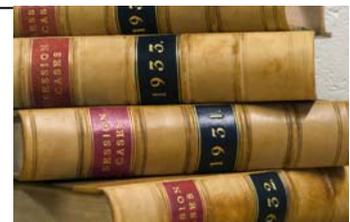
⁵ *Ibid.*

⁶ Risk Assessment Information System 2004, <http://risk.lsd.ornl.gov/homepage/glossary.shtml>.

⁷ *Ibid.*

⁸ Comprehensive Risk Analysis and Management Network, (2004), http://www.isn.ethz.ch/crn/risk_issues/risk_definitions.cfm.

⁹ *Ibid.*



occurring, multiplied by the consequences of the event, given that it has occurred”¹⁰.

In order to effectively identify crime risks implied in legislative proposals impacting on many different legal systems such as the proposals of the European Commission, the concept of crime has to be refined. In a very strict definition, crime is any behaviour prohibited by criminal law. When dealing with all 25 different criminal justice systems of the EU Member States, such a strict approach could lead to many difficulties related to the issue of national sovereignty. In order to deal with these issues, it is more appropriate to define “crime” as a criminological concept, i.e. any behaviour which is commonly recognized at the EU level as likely to violate criminal and/or administrative norms. This allows activities, such as tax evasion or antitrust abuses to be included, whose legal nature (criminal offences or administrative violations) may vary among EU MSs.

Crime risk in legislation presents two possible dimensions:

- *Non compliance risk*: this is the risk that the legislation fails to achieve the goal of regulating a sector. Instead of inducing operators in the regulated sector/market to comply with the norms, the regulation offers opportunities for criminals to disregard it.
- *Side effect risk*: this is a risk that goes beyond the specific scope of the regulation. Indeed norms can inadvertently create opportunities that can be exploited by criminals. An example of side effect risk is the displacement risk. This means that criminal activities migrate from one sector to another as a consequence of new regulation introduced in the former sector. E.g. anti money-laundering legislation increased controls over the financial systems in order to detect possible money-laundering activities. This has caused a displacement of money-laundering operations towards more informal and unofficial money-remittance systems, called *hawala* in India, *hundi* in Pakistan and Afghanistan and *chop* in China.

1.3. CRIME PROOFING AND CRIME PREVENTION IN THE EU.



This issue was originally highlighted by the EU Institutions regarding possible actions to be taken to monitor and control the infiltration of organized crime into the legitimate economy. In 1980 the *Gabert Report* emphasized the relationships between legislation and fraud, pointing out that complex legislation may stimulate fraudulent behaviours and that these behaviours were facilitated by asymmetries in the

implementation of EU policies.¹¹ After the Tampere European Council Presidency Conclusions¹² of 1999, which made important and broad

¹⁰ *Ibid.*

¹¹ See European Parliament: Working Document 1983–1984, *Report on behalf of the Budgetary Control on Fraud against the Community Budget*, Document 1–1346/83.

¹² Conclusion No. 41 of the Tampere European Council, 15–16 October 1999.



statements on the need to integrate aspects of crime prevention into legislation, several documents enacted by the EU Commission have emphasized the added value of a crime proofing strategy for legislation. The Dublin Declaration¹³ mentioned crime proofing and recommended “that an EU Good Practice Guide on designing crime out of legislation, products and services be developed in conjunction with relevant manufacturers, consumer bodies and other stakeholders”¹⁴.

Establishing a crime proofing mechanism for the EU decision-making process will provide powerful instruments to prevent crime, by minimizing possible risks arising from the laws’ weakness, and therefore achieving greater security and more opportunities for EU citizens. In the 2000 Communication on the prevention of crime in the European Union, the European Commission stressed the importance of crime proofing of legislation both at the EU and Member State level.¹⁵ The strict connection between crime prevention in the EU and crime proofing was confirmed in the 2004 Assessment of the Tampere Programme, where the Commission stated that “as regards crime prevention, efforts must be made to make goods and services less vulnerable to crime. The crime-proofing of legislation must be an integral part of this effort.”¹⁶

¹³ Issued after “Tackling Organised Crime in Partnership”, the first European Congress on developing partnerships between the public and private sectors to identify, measure and prevent harm from organised crime, held in Dublin on 20th and 21st November 2003.

¹⁴ Dublin Declaration, available at <http://www.tocpartnership.org/orgcrime2003/website.asp?page=dublin>.

¹⁵ Commission of the European Communities, Communication from the Commission to the European Parliament. *The Prevention of Crime in the European Union. Reflection on Common Guidelines and Proposals for Community Financial Support*, COM (2000) 786 final, Doc. 2000/0304 (CNS), Brussels, 29 November 2000.

¹⁶ European Commission, Communication from the Commission to Council and the European Parliament, *Area of Freedom, Security and Justice: Assessment of the Tampere programme and future orientations*, COM (2004) 401 final, Brussels, 2 June 2004.



2. OPPORTUNITIES FOR CRIME DUE TO LEGISLATION: CRIMINOGENIC LEGISLATION.

Every type of legislation may produce unintended criminal opportunities. In general, when drafting norms, legislators focus on the main objectives of their piece of legislation and do not consider the potential criminogenic effects of law. However, such effects may be extremely relevant and may ultimately undermine the main objectives of the law.

The following examples will describe how legislation may inadvertently create crime risk.

Example 1: bearer shares regulation.

A bearer share is an instrument which contributes towards anonymity being maintained inside the market, influencing the financial sector’s transparency. In many countries their use has been restricted or prohibited, but in some cases they are still allowed (for example, in Belgium bearer shares still exist, although there are plans to ban them by 2007/2008). **Bearer shares facilitate money laundering activities, because they make it possible to convert illicit money into negotiable and anonymous financial instruments.** Moreover, as shares are controlling stakes of corporations, bearer shares could be exploited to govern a company, whilst remaining anonymous.

Example 2: shell companies.

Shell companies are companies which conduct either no business or minimal business; their legitimate use is often to obtain financing prior to starting business operations, or to minimise business and tax costs. Although legitimate, they are often exploited to hide criminal activities, as they do not carry out any productive activity but work as junctions for money transfers. Their use is enhanced in those jurisdictions providing for anonymous banking and financial services, which allow the identity of the beneficial owners behind the entities to be concealed. **Such regulations increase the opportunities for several criminal activities to be committed, ranging from fraud against creditors and tax crime to money laundering and the financing of terrorism.** All major financial scandal (such as Enron and Parmalat) showed the involvement of shell companies in such massive frauds.



Example 3: suspicious transaction regulation.

According to anti-money laundering legislation, bank clerks have to report suspicious transactions. However, in those areas where criminal organizations are powerful and where intimidation or collusive behaviours are frequent, such a duty may expose clerks to threats or violence. This was facilitated by weak regulation, not

providing effective measures to guarantee the anonymity of bank officials reporting suspicious operations. **Such a loophole discouraged officials from**

reporting and therefore facilitated the commission of money-laundering and other illicit operations.

Example 4: dividends-received deduction and criminal exploitation.

The dividends-received deduction system is meant to avoid double taxation of dividends. Dividends that are already subject to taxation in the home country of the company should not be taxed again in the country of the shareholder.

According to the Belgian Tax Code (articles 202 § 2 and 203), dividends paid to a domestic company could, under certain conditions and within certain boundaries, be deducted and excluded from taxation. There was an exception on this benefit for dividends paid by a company that was established in a country in which the regulation on the payment of taxes was 'seriously more advantageous' than in Belgium. However, the wording 'seriously more advantageous' was not further elaborated by the legislator, which of course made it very difficult to know the exact scope of application of the provision in the law.

Consequently, this system favoured a practice in which a company benefited from the dividends-received deduction even for dividends that were barely taxed or not taxed at all in foreign countries. **Such ambiguity in the norm wording stimulated a mechanism that finally led companies to evade taxation on dividends.** As of 24 December 2002, this system was changed by law to prevent such abuses.

Example 5: turn over of officials.

Article 46 of Council Regulation (EC) no. 2157/2001, which creates a European Company (*Societas Europaea*) fixes the term of office for members of the governing bodies. The rule explicitly provides for a term of six years, after which auditors should quit their office, but it also says that "members may be reappointed once or more than once for the period determined in accordance with paragraph 1". The consequence is that there is no effective duty of turn over: for example, an auditor could be re-elected without limit. **This loophole decreases the independence of guardians, possibly leading to collusion and conflict of interests.**

Example 6: controls in the financial system.

Art. 129 of the Italian *Testo Unico Bancario* (TUB) proved to be the weak point in the Cirio case. Indeed, its unclear wording seemed to limit the powers of Bankitalia, the Italian National Bank, to control only in the "primary market" of foreign bonds (i.e. the market between the company issuing the bonds and the financial intermediaries/banks acquiring them). The secondary market (i.e. the market between financial intermediaries/banks selling foreign bonds and private small savers) seems to be outside the powers of control of Bankitalia. **This uncertainty has been exploited by banks in defrauding small savers by selling worthless bonds, since personal operations with bank clients ("trattative personalizzate in relazione a strumenti finanziari richiesti dalla clientela") were excluded from the competence of Bankitalia.**

Example 7: prohibitionism.

Prohibition strategies often produced criminal opportunities. Perhaps the most relevant consequence of prohibitionism is the development of black markets. Many documented cases demonstrate their generation following prohibition. The most notable include prohibition of alcohol in the U.S., whose consequence was an enormous black market, fuelled by the smuggling of alcohol from neighbouring countries, particularly Canada, and illegal production within the United States. Indeed, **illegitimate trade in prohibited and demanded products appears to be a foreseeable consequence of prohibition**, and it may be



particularly extensive where significant quantities of the product are available for diversion to illegitimate markets because of local exemptions or because the product is legally available in neighbouring jurisdictions. The unparalleled development of organised crime groups in this era of prohibition has also been recognised.

Example 8: foot and mouth disease.

With the Animal Health Act of 1981 the UK established a compensation scheme under which the owners of infected livestock are given compensation for the destruction of their infected livestock. During the outbreak of Foot and Mouth Disease (FMD), this mechanism has been allegedly exploited by those involved. A range of allegations was received by government agencies, including the deliberate infection of stock for the purposes of making claims, the making of false and inflated claims and the commission of expenses fraud by administering officials. The review highlighted weak controls as a contributory factor. Indeed, farmers were allowed to select a valuer for their infected stock, a practice which was considered to put ‘pressure’ on valuers to increase their valuations. **The absence of independent and autonomous valuers was exploited to perform frauds against the scheme.**

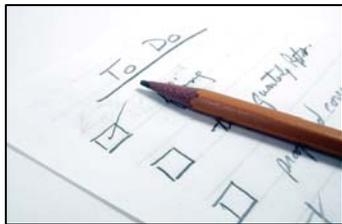




3. HOW TO IDENTIFY UNINTENDED CRIME RISKS: A STEP-BASED CHECKLIST.

The following checklist should be considered as an instrument through which EU Commission officials will be able to explore possible unintended criminal implications associated with regulation. Its purpose is to explore whether a regulatory strategy contains any crime risk and, if so, to separate such risk into its components.

The checklist is structured on three steps, which allows for a gradual assessment.



It has been developed to answer two questions: a) Does regulation produce any unintended crime risk? And b) If so, how is this crime risk structured? The first two steps of the checklist will provide information in order to answer question a), while the third step will answer question b).

The checklist follows the proportionate analysis principle: after each step, only those regulations which show a relevant crime risk will continue to the following steps. This decision is taken by the officials that are answering the checklist. Crime risks are relevant when the answers to the questions of the same step highlight actual criminal implication requiring further assessment.



3.1. STRUCTURE OF THE CHECKLIST.

The checklist is structured as follows:

STEP 1 - GENERAL CRIME RISK INDICATORS.

This step includes some specific regulatory measures likely to stimulate an interest in carrying out illicit activities. They address either criminals’ motivation or opportunities to exploit legislation. **If a policy option falls into one of these risk indicators, it will be assumed to be a relevant crime risk. Step 2 is required.**

STEP 2 - COHERENCE OF REGULATION AND MARKET VULNERABILITY TO CRIME.

This part takes two aspects into account:

- **The overall coherence of regulation**, on the assumption that ambiguous and inconsistent policy strategies may contribute to the fragmentation and complexity of the overall regulatory framework, thus causing overlaps and differing implementation at national level. Such shortcomings may be exploited to circumvent, misuse and bend regulation to the criminals’ economic interests.
- **The vulnerability of the regulated market sector to crime.** Market vulnerability plays a crucial role in exploring possible unwanted effects, as the same policy may have different impacts according to the specific market addressed. What is deemed as a relevant risk in one market may be insignificant in another.

Example: the introduction of new taxes may be an incentive for non compliant and fraudulent behaviours in a sector already infiltrated by criminal activities or characterised by weak controls. On the contrary, in a strongly regulated sector, with effective controls and heavy sanctions for abuses, operators would be less willing to run the risk of being detected, in return for the profit arising from avoiding taxes.

The vulnerability of a market sector derives from its **attractiveness** and its **accessibility** to potential criminals.

a) Attractiveness: it can be defined as the profitability of a market for criminals *minus* the risk they run of being detected and punished:

$$\text{ATTRACTIVENESS} = \text{PROFITABILITY} - \text{RISK OF DETECTION}$$

a.1) Profitability: it concerns the profit/gain/benefit a criminal could obtain by committing an illicit activity, motivation.

a.2) Risk of detection: it concerns the risk to criminals of being detected and punished. The higher the risk of detection the lower the attractiveness, hence the market is less vulnerable to crime.

b) Accessibility: it concerns the possibility of a market being entered by criminals, i.e. the presence of obstacles or barriers raised by the legislator to prevent criminals from accessing the market. The more a market is provided with barriers against access by illegitimate operators, the less vulnerable it is to crime. Of course, barriers may produce negative effects on the market, but this issue concerns the evaluation of other impacts produced by the policies which should be considered in balance, as a trade-off with the crime risk assessment.

At the end of this assessment if any relevant crime risk has been envisaged the policy option will pass to the third step.

STEP 3 - CRIME COMPONENTS.

The previous step discovers if any crime risk is associated with the policy option. In case of a positive answer this step analyses the envisaged risk, entering into the details of its components and exploring its magnitude. Criminological expertise is required to answer the related questionnaire.





3.2. THE THREE-STEP CHECKLIST.

The following paragraph contains the question in bold and the explanation in italics. Examples will be presented in boxes.

STEP 1. GENERAL CRIME RISK INDICATORS.

QUESTION 1.1. DOES THE REGULATION INTRODUCE A NEW OR MORE BURDENSOME OBLIGATION?

The introduction of new or heavier burdens increases the risk of non compliant behaviours, usually carried out through illicit activities. Waste disposal services, for example, are characterised by burdens and costs finalised to reduce negative environmental impacts linked to waste production. However, these burdensome obligations are also an incentive to choose illegal channels for waste disposal. Waste producers aim at minimizing their costs, thus opting for waste firms which offer low costs, without checking whether they are legitimate operators or criminal organizations, as well as sometimes colluding with them. As waste disposal services are mainly provided by local firms, this favours criminal organizations, which act as unfair competitors and create illegal oligopolies. Burdensome obligations may include: new standards, new administrative requirements, additional procedures/bureaucracy.

Example: Council Directive 2000/53/CE on End-Of-Life Vehicles promotes the recovery and reuse of vehicles at the end of their life, by establishing a treatment process which should improve the environmental performances of the economic operators. This entails weighting the last owner of a vehicle with the costs of its treatment and of a Certification of Destruction (COD). However, such increased administrative burdens are likely to raise the rate of abandoned vehicles and of illegal dumping activities.¹⁷

QUESTION 1.2. DOES THE REGULATION PROVIDE FOR TAX ALLOWANCES AND/OR EXEMPTIONS?

Tax allowances stimulate avoidance behaviours, usually through deceptive means for meeting the requirements to obtain the concession. Such measures may include: tax relief, tax exemptions or tax deductions.

Example: Council Regulation 2007/2000/EC removed a tariff on sugar imported from Serbia and Montenegro into the EU. This allowance was used to perform a sort of “carousel fraud”: goods were being exported from the EU, using export subsidies, and then freely re-imported from Serbia and Montenegro, finally evading taxes.

Example: The EU duty suspension system was introduced as a part of the Internal Market to improve trade between EU MSs. The unwanted effect of this policy was the so-called ‘excise diversion funds’ phenomenon. According to this system, those trading excise goods and providing evidence of their movement to other registered traders in the EU, or of their export outside the EU, can have the payment of the excise duty suspended. This would be payable whether the goods were moved to an unregistered trader or for consumption. Such movements, together with the status of goods, were recorded through the Accompanying Administrative Document (AAD). However this mechanism has been abused to obtain the suspension: companies stimulated the trade of excise goods, which were distributed on the market and not in a registered country, or exported and then returned them as duty-free goods to the home market.

¹⁷ The case studies reported hereinafter are taken from Russel M., Clarke R., *Government Regulations and their Unintended Consequences for Crime: a Project to Develop Risk Indicators*, London 2003, report prepared by the Jill Dnado Institute and Transcrime for the EU Crime Proofing Steering Group.



This example shows how tax relief can increase motivation to commit crime. Inadequate vetting of warehouses and standards as proof of movement, as well as improper controls and inspections (reduced after the introduction of the duty suspension system) were identified as added factors which favoured such fraud.

QUESTION 1.3. DOES THE REGULATION INTRODUCE BENEFITS SUCH AS GRANTS, SUBSIDIES AND COMPENSATION SCHEMES?

Grants, subsidies, compensation schemes and benefits can often be an incentive to adopt deceptive means to obtain such profits. For example differences in the level of compensation for different benefits may lead to deceptive behaviour in order to receive the most profitable benefit.

Fraudulent behaviours are the most likely offences stimulated by such measures, potentially facilitated by corrupting the public officials in charge with the proceedings. Such measures may include: subsidies, grants and compensation schemes.

Example: The UK foot and mouth compensation scheme increased the motivation for committing fraud, exploiting the weak controls in the sector. The system provides compensation to the owners of infected livestock when they declare that these have been destroyed. Some farmers exploited this compensation scheme by various means: false or inflated claims, deliberate infection of their livestock to make claims and colluding with administering officials in defrauding the government.

Example: The agriculture sector offers many examples of fraudulent behaviour aiming to exploit government benefits, e.g. for organic food and farming. The European Union promotes the development of organic farming, through targeted funds. However, it has been found that often false organic products are traded as organic, as well as these funds being diverted toward non organic farming.

QUESTION 1.4. DOES THE REGULATION INTRODUCE TAX ON LEGAL GOODS/SERVICES, OR INCREASE THE COST OF LEGAL GOODS/SERVICES?

Taxation is traditionally associated with avoidance behaviours, which may also include fraud. When taxation involves legal goods or services, increasing its cost, parallel markets and smuggling are likely to be established, often taking advantage of the existing differences between national tax systems. Fraud and corruption may also occur, facilitating illicit trafficking. Such measures may include: taxes, customs duties and excise.

Example: Since the 1990’s, the UK has introduced high excise on tobacco, aiming to discourage tobacco consumption. However, the negative impact has been an increase in tobacco smuggling, involving other European countries, in particular from the Netherlands, which are gates into UK from the continent for illegal trade.¹⁸

QUESTION 1.5. DOES THE REGULATION PROHIBIT OR LIMIT THE PRODUCTION AND/OR THE DISTRIBUTION OF A DEMANDED GOOD/SERVICE?

When limits to the distribution/production of a good are established, the demand is higher than the supply. This stimulates the creation of black markets, where illegitimate operators act as unfair competitors. Smuggling of goods, together with counterfeiting and trademarks violations, are the main offences linked to such policies. Examples of limits to the production/distribution are: limits to export/import, introduction of legal monopolies, more stringent trademark

¹⁸ To this purpose see the related study: Van Duyne P.C., *Organizing cigarette smuggling and policy making, ending up in smoke*, in “Crime, Law and Social Change”, no. 39, 2003, pp. 285–317.



regulation, new standards of quality/labels and increases to the cost of production factors.

QUESTION 1.6. DOES THE REGULATION REMOVE A LAW ENFORCEMENT CAPACITY OR DECREASE FUNDING FOR LAW ENFORCEMENT ACTIVITY OR IN ANY OTHER WAY WEAKEN A LAW ENFORCEMENT ACTIVITY?

The assumption is that a decrease in law enforcement activity is likely to produce a consequent increase in the behaviour subject to enforcement. This happens either when funding of the law enforcement agencies is reduced or when their effective competencies and powers are weakened in some way. It should be pointed out that, even when a law enforcement capacity has been improved, possible unwanted effects can be envisaged: for instance displacement of illicit activity may occur towards less controlled sectors. Removal of a law enforcement capacity may include: decreased funds, moving funds from one sector to another, reduction in powers and competencies.

Example: The introduction of federal jurisdiction over tobacco smuggling in the United States facilitated an increase in tobacco smuggling, due to a decreased involvement of State law enforcement agencies. Indeed, the centralization of law enforcement activity reduced the effectiveness of controls.

Example: Unintended negative impacts have been associated to the strengthening of U.S./Mexico border enforcement in the 1990s. As organized smuggling groups perceived a higher difficulty in moving between the countries, an increase of illegal immigrants in the U.S was registered, together with border-crossing attempts in less protected areas. Another consequence was the increased number of crossing-deaths, due to the adoption of more clandestine methods of transit from one country to the other.

QUESTION 1.7. DOES THE REGULATION INCREASE THE DISCRETIONARY POWER OF OFFICIALS OR PROVIDE THEM WITH NEW DISCRETIONARY POWERS?

Discretionary power entails taking decisions or actions without a substantial control upon their advisability. Such powers usually concern the allocation of benefits or the imposition of burdens, which increase the interest in corrupting officials. The main risks associated with the empowerment of administering officials are a lower visibility due to increased discretion, a higher risk of conflict of interests, the involvement of a lower number of officials or a too chaotic ramification of competencies. Corruption is the most likely offence arising from such regulation, linked with fraudulent activities aimed at manipulating the final decisions. Examples of discretionary power are: possibility to take decisions without need of motivating them, decisions/actions not subject to supervision of independent control body, decisions without predetermined guidelines.

Example: The number of goods classifications used by customs has been deemed to be a risk factor for corruptive practices. The large number of possible classifications, which allows for different interpretations, favours the discretion of customs officials, e.g. giving them the power to classify a good into a lower-tax category.

If at least one of the above questions is answered “YES”, step 2 is required.



STEP 2. COHERENCE OF REGULATION AND MARKET VULNERABILITY.

STEP 2.1. COHERENCE OF REGULATION.

QUESTION 2.1.1. IS THE REGULATION LIKELY TO PRODUCE REGULATIVE OVERLAPS?

Every new legislative measure produces a series of impacts which go beyond the specific regulated sector. Such interplays should be considered when drafting a proposal, as unintended contradictions or mere overlaps with similar legislation may occur. It might lead to the exploitation of these shortcomings in the whole regulatory framework to the purpose of bending the law for private gains. Indicators of regulative overlaps are: excess of acts regulating the same field, contradictions among the provisions of the same act or conflict between goals and norms.

Example: The recent Italian scandals, in particular the Parmalat and the *Banca Popolare Italiana* (BPI) cases, highlight an example of regulatory uncertainty. In the latter scandal the BPI was investigated to find whether it acted illegally in attempting to buy its competitor Antonveneta and whether any illegitimate help of the ex-governor of Bankitalia could be found. Regulatory overlaps have been discovered in the identification of Bankitalia and Consob’s competencies. The former should control banking activities; the latter is in charge of monitoring the stock exchange market. Both of them played a role in the Antonveneta business, but the borders of their duties and responsibilities were not clear. Such a gap, making the respective competencies uncertain, poses a great risk of the market being compromised along with the involved operators.

QUESTION 2.1.2. IS THE REGULATION EASILY APPLICABLE WITH THE EU?

EU regulations should be implemented by national governments without causing inefficiencies or undesired effects. Possible consequences are, apart from delays in the implementation, a fragmentary compliance by MSs and a messy regulatory framework. The risk of law misuse and exploitation may occur accordingly. Indicators of difficult applicability of regulation are: tight deadlines, high costs and long and complex requirements and adaptation.

Example: The lack of a proper implementing structure and mechanism, as well as the provision of unrealistic deadlines, may hamper Member States in the correct application of new measures. The same effect may be produced when national budgets are insufficient or inadequate for meeting the requests of the EU legislator.

QUESTION 2.1.3. IS THE REGULATION LIKELY TO PRODUCE REGULATORY ASYMMETRIES AMONG MSs?

Regulative asymmetries are one of the main factors associated with circumvention of legislation. They may depend both on how the regulation is conceived and on how it is drafted (e.g. a too generic content prone to many interpretations, a vague language, problems in translation) and on unwanted effects due to the different national legal systems (e.g. delocalization or centralization of specific competencies, the different balance between private and public levels, the welfare system). Law and jurisdiction shopping, not illegal in itself, may actually hide deceptive behaviours and illegitimate purposes. They are generally associated with tax and duties evasion, but often work as an incentive for fraudulent conducts or as facilitators for illegal practices linked to the business environment.

Factors likely to create asymmetries are: generic and ambiguous terms, norms prone to different implementations, difficulties in translation



Example: Off-shore jurisdictions are used not only to bypass tax burdens, but also as privileged channels for the activities of organized groups. Money laundering, financing of terrorism and trafficking of legal and illegal goods exploit the lack of transparency offered by these legal systems. Asymmetries between on-shore and off-shore jurisdictions are an incentive to choose less transparent channels, which offer anonymous banking services and profitable business solutions.¹⁹

STEP 2.2. MARKET VULNERABILITY TO CRIME (SEE ABOVE P. 7).

QUESTION 2.2.1. IS THE MARKET ALREADY INFILTRATED BY ECONOMIC AND ORGANIZED CRIME? IF SO, WHICH CRIMES?

This is an indicator of market vulnerability: a market where criminal activities are frequent (such as the tobacco market and the public procurement sector or waste disposal market) is more exposed than others to further abuses.

QUESTION 2.2.2. IS THE MARKET/SECTOR PROFITABLE FOR CRIMINALS?

Profitability of a given market in relation to crime refers to the gains/profits a criminal could obtain by carrying out illicit activities. It can be assessed by estimating how much added value the component of a market, i.e. production factors (capital, raw material, labour), product and structure (competitive, monopolistic, or oligopolistic) would produce when subject to a criminal transaction. Such measures may include: high economic value of the product, monopolistic structure, high value of production factors, high demand and low supply.

Example: The fashion and pharmaceutical markets are profitable for counterfeiting because of the high value of trademarks;
The waste market is profitable for criminal organizations, whose profits are gained by avoiding the costs of the legitimate market
The tobacco market is profitable for smuggling because of the high taxes levied on cigarettes.

QUESTION 2.2.3. IS THE MARKET PROVIDED WITH SYSTEMS/STRUCTURES TO DETECT CRIMINALS?

This concerns the risk to criminals of being detected and consequently punished. The main assumption is that the greater the likelihood that a criminal will be detected, the less s/he will be willing to commit a crime. Therefore a high risk of detection reduces the attractiveness of a market to crime. Controls and security strategies are the necessary instruments to increase the risk of detection; these may include: mechanisms for the identification of legal/natural persons operating in the market, disclosure procedures, internal auditing to monitor managing powers, independent supervision authorities provided with clear and effective powers, requirements of professionalism and probity for guardians and inspections and cross-checks.

Example: The waste disposal market is characterized by low visibility and weak controls, due to the difficulty in monitoring waste movement from the producers to the final site. In Italy this happens because of the local dimension of waste disposal services connected to criminal oligopolies, which are able to prevent effective controls. Paper controls, i.e. documents certifying the nature and destination of

¹⁹ To deepen the question see Transcrime, *Euroshore—Protecting the EU Financial System from the Exploitation of Financial Centres and Offshore Facilities by Organised Crime*, Transcrime, Trento, January 2000.

waste during transit, contribute towards weakening the whole system, by being exposed to falsification and abuse.



QUESTION 2.2.4. IS THE MARKET ACCESSIBLE TO CRIMINALS?

Accessibility of a market to crime means the objective capability of illegitimate newcomers to infiltrate a given market. It depends on the obstacles and barriers raised by legislation against illicit behaviours. The main assumption is that the more obstacles/barriers raised against illegitimate entry into the market, the less it will be accessible to criminals. Such measures may prevent companies with bad or less reliable finances (thus more inclined to bypass legitimate channels) from accessing to the market. Barriers may be of different natures, ranging from: background checks, standards of professionalism/competence/honesty, economic thresholds, administrative authorizations etc.

Example: Public Procurement regulations usually fix an economic threshold for companies which intend to compete for tenders. The minimum capital required aims at selecting participants, on the assumption that possession of a high capital should ensure high reliability. However, if the regulation does not apply also to subcontractors the goal of the provision is defeated. Such a loophole may be exploited by criminal organizations, which would be able to bypass the economic barrier.

If any relevant crime risk is envisaged, step 3 is required.

STEP 3. CRIME COMPONENTS.

STEP 3.1. CRIME.

QUESTION 3.1.1. WILL THE AMOUNT OF CRIME VARY?

QUESTION 3.1.2. HOW WILL THE RISK OF BEING DETECTED COMMITTING A CRIME VARY?

This refers to the expected effects of the considered regulation on the likelihood of being detected (e.g. detection, and/or identification of the author and/or report to law enforcement agencies and/or prosecuted). The risk of being detected is one of the major deterring factors for criminals.

Example: thanks to technological improvements, many new legislation introduced electronic controls in sensible sectors/markets (e.g., transports, food production). The replacement of paper documents with electronic documents with appropriate anti-forgery devices increase the risk of being detected for criminals and should therefore deter them from forge certificates and documents.

QUESTION 3.1.3. HOW WILL THE EXPECTED PROFIT FOR THE AUTHORS OF CRIME VARY?

This refers to the expected effects of the considered regulation on profits obtained through fraud (i.e. reduction of costs and/or increase of revenues). If appropriate, consider also non-monetary forms of profit.

Example: legislation introducing expensive burdens or requirements on market operator may render very profitable a non-complying or falsely complying behaviour by enterprises.



STEP 3.2. AUTHORS.

QUESTION 3.2.1. WILL THE NUMBER OF AUTHORS VARY?

This refers to the expected effects of the considered regulation on the overall number of authors (reported and unreported). Regulations that reduce controls or increase the potential profits deriving from criminal activities will likely increase the number of the authors. However, an increase of the amount of crimes may be caused by an increase of the number of crimes per author.

QUESTION 3.2.2. HOW WILL THE COMPLEXITY OF THE ORGANIZATIONAL STRUCTURE OF A CRIME VARY?

This refers to the expected effects of the considered regulation on the level of organization required to commit a fraud. In particular, please assess if the considered policy option/main action will affect the minimum number of authors required to commit a fraud and/or the need of a coordinated organization.

The complexity of the organization required is a relevant element in the criminals’ choice to commit a crime. Indeed co-ordination of different agents as well as recruitment and management of many people is particularly complex for illegal organisation, since they cannot rely on legal instruments of argument settlement (no access to contracts, tribunals, law enforcement system) in the illegal arena. The more complex the organisation of frauds and other crimes become, the more difficult will be for criminal to commit such crimes.

Example: a piece of legislation introduces controls on the quality of food. Consequently, it regulates the production processes and requires such processes to be certified by competent authorities. These provisions will indirectly increase the organizational requirements to commit crimes in the food sector. Indeed, criminal may have to bribe national authorities and/or forge the required certifications. Since such activities do not fall under the standard food production activities, they will probably need the involvement of third persons in the criminal activity, so increasing the complexity of the organisation.

QUESTION 3.2.3. HOW WILL THE INDIVIDUAL SKILLS/KNOWLEDGE REQUIRED TO COMMIT A CRIME VARY?

This refers to the expected effects of the considered regulation on the overall skills and knowledge needed to commit a fraud. If a sector requires considerable skills and knowledge to operate, it will be less accessible to criminals.

Example: electronic documents require higher skills to be forged than mere paper documents. Consequently, their introduction may increase the skills required to commit forgery and other crimes.

QUESTION 3.2.4. FOR NATURAL PERSONS, HOW WILL THE PROFESSIONAL REQUIREMENTS NEEDED TO COMMIT A CRIME OR FACILITATING THE COMMISSION OF A CRIME VARY?

This refers to the expected effects of the considered regulation on the professional (e.g. registered professionals or similar professional certificates). Many norms require specific professional requirements or other certifications in order to operate in a market/sector.

Example: many norms require that individuals having particular top management roles in enterprises should have particular professional requirements, such as inscription on management or other registers or similar.



QUESTION 3.2.5. FOR LEGAL PERSONS, HOW WILL THE ECONOMIC/LEGAL REQUIREMENTS NEEDED TO COMMIT A CRIME VARY?

This refers to the expected effects of the considered regulation on the economic and/or legal requirements actually needed to commit a crime. Such requirements may be expressly imposed by the law or ensue from the structure of the targeted market/sector. These issues may affect illegal enterprises/activities just as well as the affect legal activities. Therefore it is important to investigate the impact of a proposed legislation on the structure of the enterprises operating in the sector.

Example: in order to ensure appropriate guarantees for the costumers and the solidity of the banking system, banks have to fulfil with a series of requirements in order to operate with the public, such as capital reserves. Any change in such requirements will consequently modify the structure of the banking sector. These modifications may impact on the sector in a positive (e.g. increasing concurrence and transparency of the banking system) or negative way (e.g. facilitating frauds or increasing the opacity of the market), thus affecting the economic/legal requirements to commit credit frauds and other similar crimes.

STEP 3.3. VICTIMS.

QUESTION 3.3.1. HOW WILL THE AMOUNT OF VICTIMS (NATURAL PERSONS) VARY?

This refers to the expected effects of the considered regulation on the overall number of victimized people. The amount of victimized people is a very relevant issue concerning the impact of a potential crime risk.

Example: after the occurrence of a disaster, emergency legislation allocating funds for reconstruction is usually enacted, whose vulnerabilities are exploited by organised crime in order to divert the aids to their convenience. On 23-24 November 1980 an earthquake struck Irpinia (Southern Italy) causing 2735 deaths. The emergency relief law was exploited by organised crime (camorra). The level of criminal infiltration in the building industry rose, the buildings were not reconstructed or were reconstructed late and/or badly, and other crimes (killings, corruption, arson) were committed.

QUESTION 3.3.2. HOW WILL THE SOCIO-DEMOGRAPHIC CHARACTERISTICS OF VICTIMS (NATURAL PERSONS) VARY?

This refers to the expected effects of the considered regulation on the main socio-demographic (e.g. educational level, sex, age, ethical origins) characteristics of the victims. This question aims at assessing any variation in the characteristics of the victims of a crime. This issue may be relevant even if the overall amount of expected victims is not likely to increase.

Example: the introduction of anti pollution norms in Italy has force many enterprises to move their activities in countries with more permissive environmental legislation. E.g. an enterprises producing aluminium coffee machines in Northern Italy moved its production plants in Eastern Europe, where anti-pollution laws are less strict and could easily be fooled. As a consequence, the people living in such countries became victims of possibly illegal pollution and had to sustain higher health care costs in countries with worse the public health systems.

QUESTION 3.3.3. WILL THE AMOUNT OF VICTIMS (LEGAL PERSONS) VARY?

This refers to the expected effects of the considered regulation on the overall number of victimized legal persons (e.g. profit/no profit organizations, state and governmental agencies).



Example: a change in industrial property legislation may not specify in a clear way when a company’s trademark is imitating another registered trademark. Such a piece of legislation would likely increase the number of companies suffering from illicit trademark imitation.

QUESTION 3.3.4. HOW WILL THE ECONOMIC/LEGAL CHARACTERISTICS OF VICTIMS (LEGAL PERSONS) VARY?

This refers to the expected effects of the considered regulation on the economic (e.g. corporate size, national or multinational companies) legal (e.g. corporate structure) characteristics of the victims (legal persons).

Example: regulation of the credit sector may require specific pre-existing assets in order to obtain fund from banks or other sponsor. This mechanism may push newborn enterprises to avoid the legal credit sector and resort to the usury market.

STEP 3.4. COSTS/HARM.

QUESTION 3.4.1. WILL THE TOTAL COSTS OF THE CRIME VARY?

An assessment of the economic impact of the proposed legislation on the whole society will provide a very useful tool of comparison between envisaged policy options.

QUESTION 3.4.2. HOW WILL PRIVATE COSTS VARY?

This refers to the expected effects of the considered regulation on the direct costs suffered by victims. The assessment of such impact may be very relevant when choosing the optimal policy option.

Example: legislation decreasing controls on the pharmaceutical sector may affect the product reliability and safety. This may impact on the cost suffered by victims of frauds and counterfeiting of pharmaceutical products, since they may face higher health care costs due to unexpected effect of medicines.

QUESTION 3.4.3. HOW WILL SOCIAL COSTS VARY?

This refers to the expected effects of the considered regulation on any non-private cost, such as costs imposed on a whole sector/area or on society.

Example: frauds against the EU common agricultural policy directly affect the EU and MSs budget. However, these crimes also hinder the ultimate purposes of the common agricultural policy, subtracting fund from deserving commercial farms. The social costs include the losses and inefficiencies caused by this diversion of funds from their original and legitimate goal.



4. CONCLUSIONS.

Main concepts.

Crime proofing of legislation is a form of risk management applied to crime. Its core idea is that legislation may inadvertently produce opportunities for crime. Indeed, legislation may entail criminogenic effects, i.e. the possibility to facilitate the commission of crimes. Therefore, *crime proofing of legislation aims at measuring existing (“ex post crime proofing”) or future (“ex ante crime proofing”) opportunities for crime due to legislation and at highlighting related interventions in order to proof it against crime.*

Risk means *the probability defined as the likelihood that a crime, as a negative event, will occur (e.g. 1 in 100 chance per year), and the impact, defined as the harm caused to society and individuals by such a crime.* Crime risk is functional to the expected losses/harm which can be caused by a criminal behaviour and to the probability of such behaviour.

In order to deal with the criminal justice systems of 25 EU MS, a criminological definition of crime should be adopted. Instead of relying on a strictly legal definition, “crime” should be considered as any behaviour recognized at the EU level as likely to violate criminal and/or administrative norms. This approach allows behaviours such as tax evasion and antitrust violations to be included, even though they are not always criminalized.

The concept of criminogenic effects of legislation assumes that law may inadvertently produce unintended criminal opportunities. Such opportunities may consist of new techniques to commit crimes, higher incentives (e.g. profits) related to crime, weaker controls, as well as particular side effects such as the displacement of criminal activities from one sector to another. Every criminal opportunity increases the harm and/or the threat of a crime risk.

Any kind of legislation may produce unintended criminal opportunities. While frequently overlooked, such effects may be extremely relevant and may ultimately undermine the main objectives of the law.



The three-step checklist.

The following checklist provides a simple and easy tool to check whether a piece of legislation may contain unintended crime risks. It has been designed in order to allow Commission officials to easily verify if a given proposal presents crimes risks and thus needs further assessment and consideration.

STEP 1. GENERAL CRIME RISK INDICATORS.

Question 1.1 Does the regulation introduce a new or more burdensome obligation?

Question 1.2 Does the regulation provide for tax allowances and/or exemptions?

Question 1.3 Does the regulation introduce subsidies, grants, compensation schemes or benefits in general?

Question 1.4 Does the regulation introduce tax on legal goods/services, or increase the cost of legal goods/services?

Question 1.5 Does the regulation prohibit or limit the production and/or the distribution of a demanded good/service?

Question 1.6 Does the regulation remove a law enforcement capacity or decrease funding for law enforcement activity or in any other way weaken a law enforcement activity?

Question 1.7 Does the regulation increase the discretionary power of officials or provide them with new discretionary powers?

IF AT LEAST ONE OF THE ABOVE QUESTIONS IS ANSWERED
"YES", STEP 2 IS REQUIRED.

STEP 2. COHERENCE OF REGULATION AND MARKET VULNERABILITY.

STEP 2.1. COHERENCE OF REGULATION.

Question 2.1.1 Is the regulation likely to produce regulative overlaps?

Question 2.1.2 Is the regulation easily applicable within EU?

Question 2.1.3 Is the regulation likely to produce regulatory asymmetries among MSs?

STEP 2.2. MARKET VULNERABILITY TO CRIME.

Question 2.2.1 Is the market already infiltrated by economic and organized crime? If so, which crimes?

Question 2.2.2 Is the market/sector profitable for criminals?

Question 2.2.3 Is the market provided with systems/structures to detect criminals?

Question 2.2.4 Is the market accessible to criminals?



↓

IF ANY RELEVANT CRIME RISK IS ENVISAGED, STEP 3 IS REQUIRED.

↓

STEP 3. CRIME COMPONENTS.

STEP 3.1. CRIME.

Question 3.1.1. Will the amount of crime vary?

Question 3.1.2. How will the risk of being detected committing a crime vary?

Question 3.1.3. How will the expected profit for the authors of crime vary?

STEP 3.2. AUTHORS

Question 3.2.1. Will the number of authors vary?

Question 3.2.2. How will the complexity of the organizational structure of a crime vary?

Question 3.2.3. How will the individual skills/knowledge required to commit a crime vary?

Question 3.2.4. For natural persons, how will the professional requirements needed to commit a crime or facilitating the commission of a crime vary?

Question 3.2.5. For legal persons, how will the economic/legal requirements needed to commit a crime vary?

STEP 3.3. VICTIMS.

Question 3.3.1. How will the amount of victims (natural persons) vary?

Question 3.3.2. How will the socio-demographic characteristics of victims (natural persons) vary?

Question 3.3.3. Will the amount of victims (legal persons) vary?

Question 3.3.4. How will the economic/legal characteristics of victims (legal persons) vary?

STEP 3.4. Costs/HARM.

Question 3.4.1. Will the total costs of the crime vary?

Question 3.4.2. How will private costs vary?

Question 3.4.3. How will social costs vary?



A possible procedure to identify crime risks.

Risk assessment models have already been applied with success in the socio-political, environmental, technological and health fields.

The most frequently used models are: Event-tree risk assessment, Indicator-based risk assessment, Step-based risk assessment and Indicator/step-based risk assessment.

The experience gained from the project "A study on Crime Proofing – Evaluation of crime risk implications of the European Commission's proposals covering a range of policy areas" (contract No. DG.JAI-D2/2004/05) led to the creation of a methodology to assess crime risk in the proposals of the European Commission (see Annex). This Crime Risk Assessment process may be a very important step towards a very effective crime prevention strategy in the EU. The CRA process is divided in 3 steps:

- **Step 1: Initial Screening (IS).** Its aim is to check if a piece of legislation falls within 7 general risk indicators. If one or more envisaged policy options fall within the 7 categories, these options will pass to the Preliminary Crime Risk Assessment (PCRA).
- **Step 2: Preliminary Crime Risk Assessment (PCRA).** Its aim is to assess if the policy options that have been identified in the IS effectively present unintended crime risks. If at least one policy option presents at least a medium level crime risk, such option(s) will pass to the Extended Crime Risk Assessment (ECRA).
- **Step 3: Extended Crime Risk Assessment (ECRA).** Its aim is to make an in-depth assessment of risky policy options that have been identified after the PCRA.



ANNEX. THE CRIME RISK ASSESSMENT PROCESS.

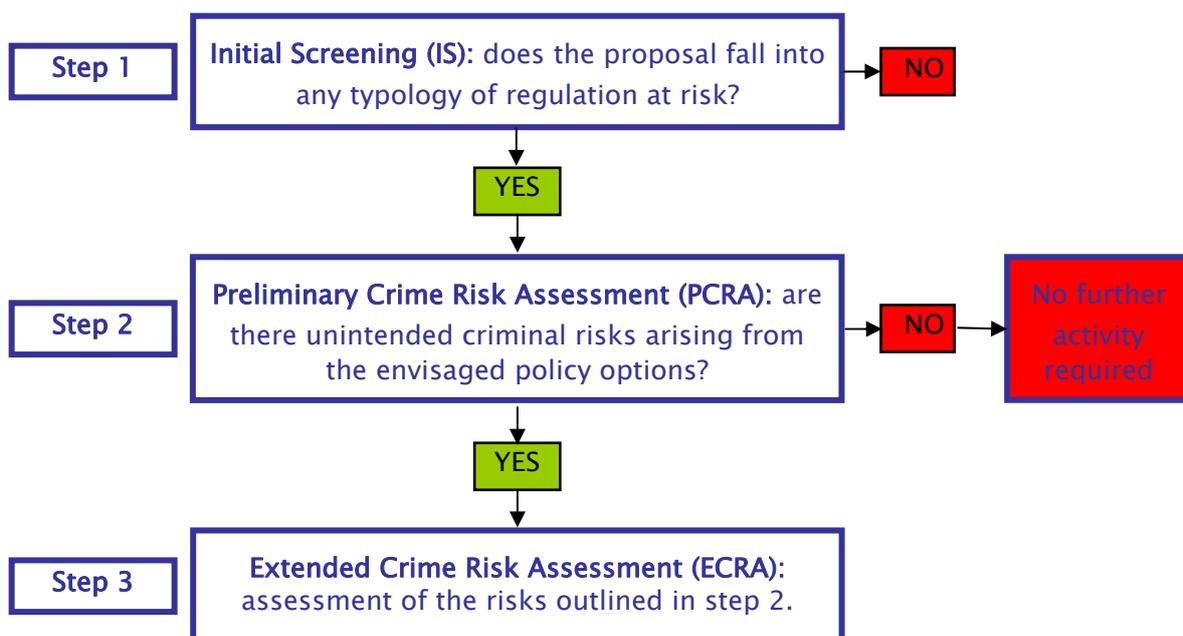
Crime proofing is a type of risk assessment. Risk assessment models have already been applied with success in the socio-political, environmental, technological and health fields.

There is no ideal risk assessment model: each risk has different characteristics that require a specific approach. The most frequently used models are: Event-tree risk assessment, Indicator-based risk assessment, Step-based risk assessment and Indicator/step-based risk assessment.

The most appropriate model for a crime risk assessment of legislation is a step-based risk assessment. This consists of structured phases or steps of risk analysis; it is by far the most pervasive technique. The steps generally focus on the different components of risk, from the *probability* or *likelihood* of the event occurring, to its impact (expressed as costs on society and individuals), until achieving a synthetic result. This method of risk analysis spans all areas of risk assessment and serves as a practical framework for standardizing assessment techniques.

Under the project “A study on Crime Proofing – Evaluation of crime risk implications of the European Commission’s proposals covering a range of policy areas” (contract No. DG.JAI-D2/2004/05) Transcrime – Joint Research Centre on Transnational Crime – developed a methodology to assess unintended crime risks in the proposals of the European Commission. The Crime Risk Assessment (CRA) process consists of 3 logically interlinked steps. The whole process is based on the principle of proportionality, as requested by the Commission’s Guidelines, in order to avoid an excessive workload when not required. The CRA process starts with the Initial Screening which frames the policy options into 7 different general risk indicators; if any regulation is found to be at risk, it continues to the Preliminary Crime Risk Assessment (PCRA), which assesses the potentially criminogenic policy options. If the PCRA highlights at least a medium level crime risk, an Extended Crime Risk Assessment (ECRA) will be recommended which will assess the risky options with the help of external experts.

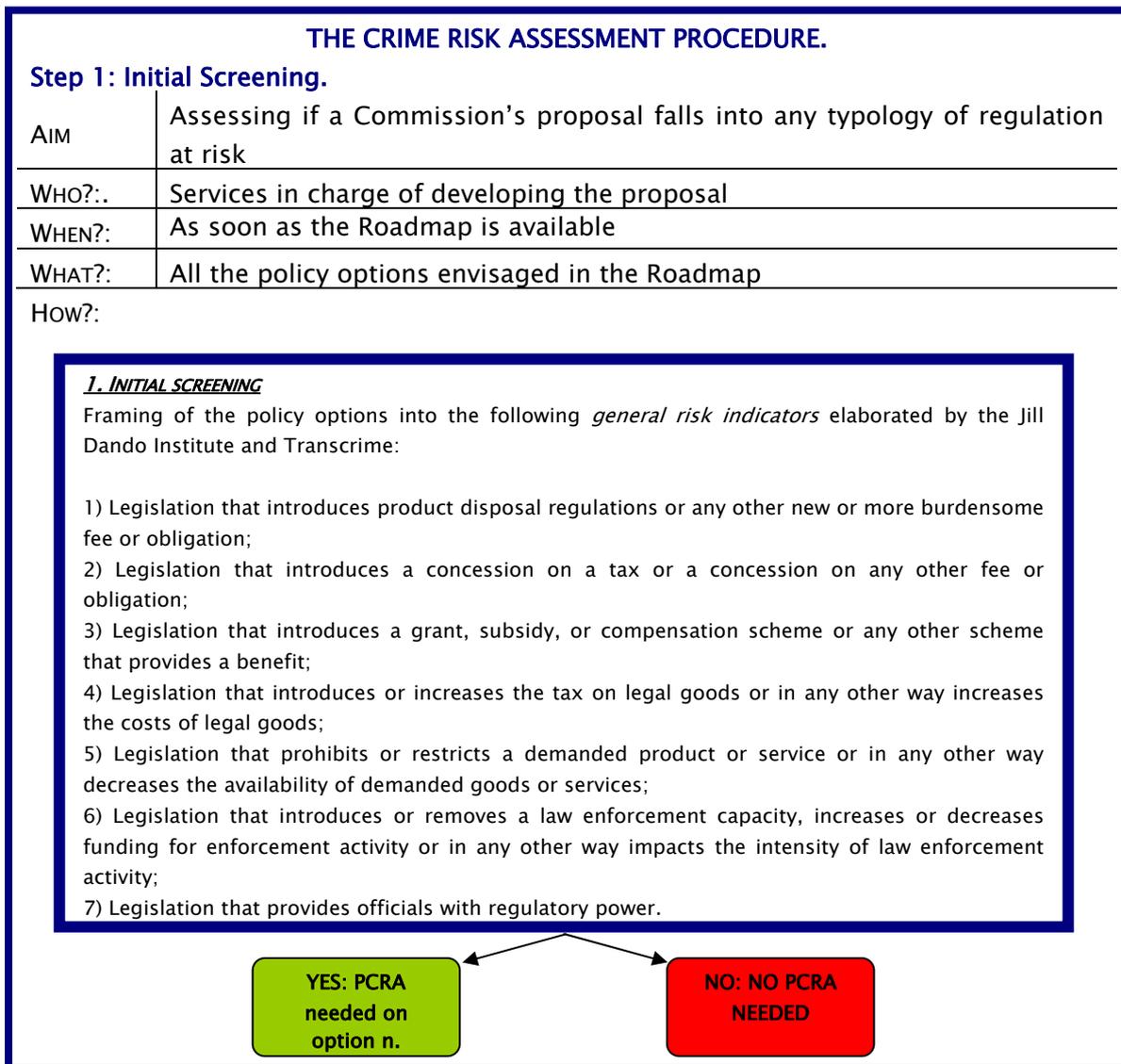
The following diagram illustrates the main steps of the CRA process:





THE INITIAL SCREENING (IS).

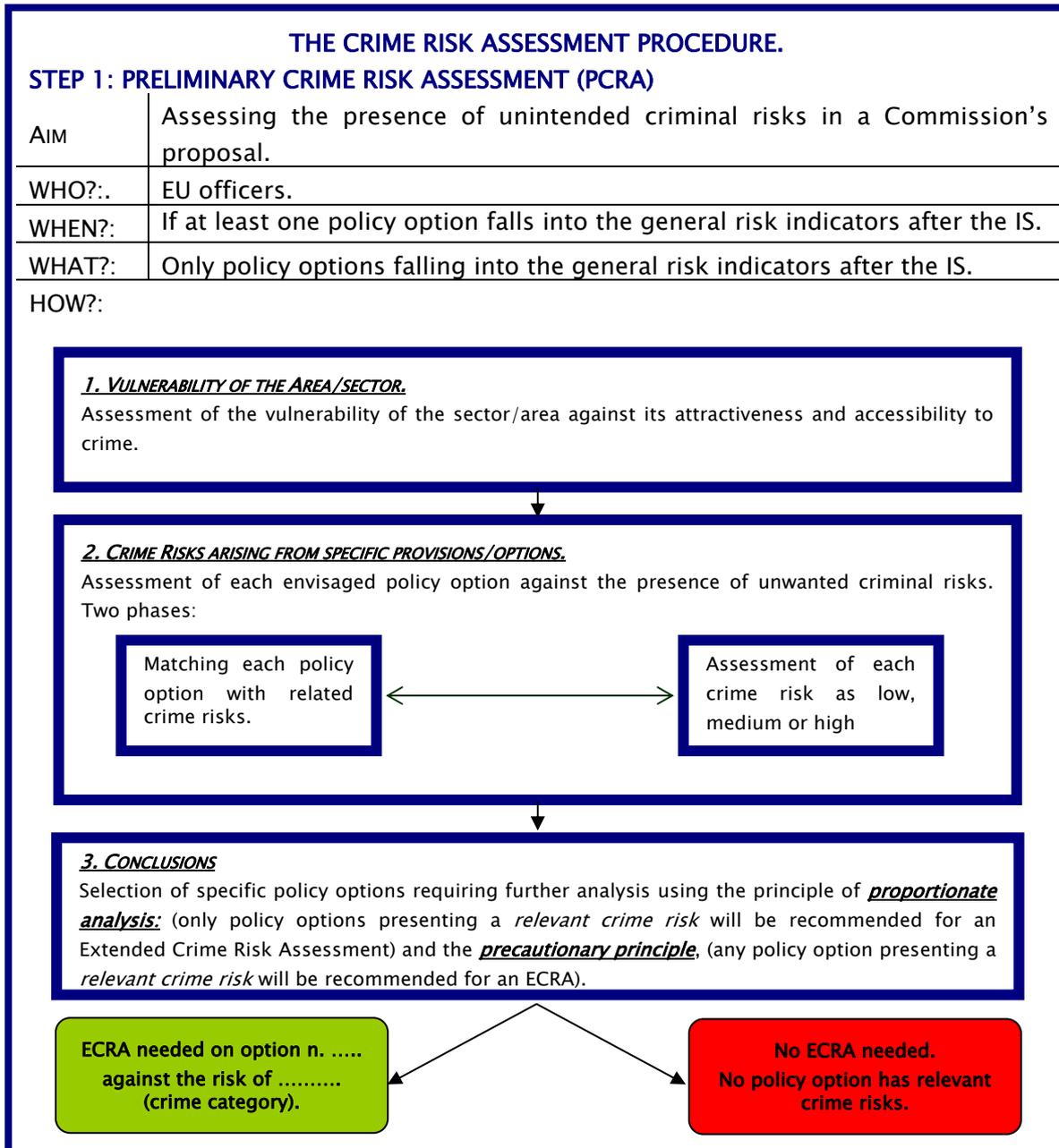
The IS is the first step of the CRA process. Its aim is to check if a piece of legislation falls within 7 general risk indicators. Officials of the relevant DGs should frame the proposed regulation in one or more of the 7 abovementioned typologies. If no policy option can be framed into one risk indicator, the CRA process will end and no further activity will be required. If one or more envisaged policy options fall within the 7 categories, these options will pass to the Preliminary Crime Risk Assessment (PCRA). The following diagram graphically represents the IS:





THE PRELIMINARY CRIME RISK ASSESSMENT (PCRA).

The PCRA is the second step of the CRA process. Its aim is to assess if the policy options that have been identified in the IS effectively present unintended crime risks. Evaluators will briefly assess the vulnerability of the sector/area to be regulated. They will identify the criminal behaviours that may occur and will assess such risks. If at least one policy option presents at least a medium level crime risk, such option(s) will pass to the Extended Crime Risk Assessment (ECRA). The following diagram graphically represents the PCRA:





THE EXTENDED CRIME RISK ASSESSMENT (ECRA).

The Extended Crime Risk Assessment (ECRA) is the third step of the overall Crime Risk Assessment process. Its aim is to make an in-depth assessment of risky policy options that have been identified after the PCRA step. This step relies on the assistance of a team of experts. Such a contribution is needed in order to provide clear and specific knowledge of the sector’s mechanisms and their possible impacts on crime. The following diagram graphically represents the ECRA:

