



Compass 2020

Germany in international relations
Aims, instruments, prospects



Prevention and Suppression of Organised Crime

Future Action Perspectives from a German
and a European Angle

Richard Mörbel & Sönke Schmidt

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The Compass 2020 project represents the Friedrich-Ebert-Stiftung's contribution to a debate on Germany's aims, role and strategies in international relations. Compass 2020 will organise events and issue publications in the course of 2007, the year in which German foreign policy will be very much in the limelight due to the country's presidency of the EU Council and the G 8. Some 30 articles written for this project will provide an overview of the topics and regions that are most important for German foreign relations. All the articles will be structured in the same way. Firstly, they will provide information about the most significant developments, the toughest challenges and the key players in the respective political fields and regions. The second section will analyse the role played hitherto by German / European foreign policy, the strategies it pursues and the way in which it is perceived. In the next section, plausible alternative scenarios will be mapped out illustrating the potential development of a political field or region over the next 15 years. The closing section will formulate possible points of departure for German and European policy.

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Abstract

According to Europol, there are some 4000 organised crime groups active in the EU with very differing organisational structures. Globalised and more intensive trade relations plus technological progress have made a considerable contribution to the internationalisation of their activities, which now transcend cultural, legal and economic limits. Yet the actual size of the threat posed by organised crime is difficult to assess; the greater part of criminal activities remains undetected.

Criminal groups visualise Europe as a single area of action, which means that Europe needs a suppression approach which is correspondingly unified and in which the national policies of member states of the EU are integrated. This suppression approach should be both repressive and preventive in its focus and should be based on an overall strategy for internal security in the EU. A strategy of this kind should aim inter alia at a situation where transnational investigations are routine and where European institutions such as Europol and Eurojust are further strengthened. In the area of intergovernmental cooperation, a quantum leap is required: all law enforcement actors should be brought together in a broad European information and cooperation network. Priority must continue to be given to the reciprocal recognition of sentences, rulings and procedures, if necessary on the basis of further harmonisation measures for instance in the procedural area. Data protection should not be ignored in this process, but it needs to be modernised: all technological options should be fully exhausted to guarantee on the one hand adequate scope for weighing up alternatives while at the same time making possible the identification of misuse.

What must then follow is the effective mobilisation of the political, economic and public sectors, which must be brought together in a broader opinion-forming process. For this reason the political sector must, in its own vital interest, not only support the combating of organised crime but give it active support. The funds made available by the EU will increase tenfold between 2006 and 2013 to around 150 Mio. Euro and can make an effective contribution to intensifying the efforts required.

Finally, cooperation between law enforcement bodies should not stop at borders. Where criminal groups operate on a global basis, every effort should be made for countermeasures to be globally effective. The EU, with its specific experience in intergovernmental cooperation on security, can in the future and in its own interest adopt a pioneer role.

I. Organised Crime – “In the Shadows of Public Awareness”

It is difficult to give an exact description of organised crime. It pervades our society like a dense network of underground fungus. Links are only sporadically visible, organisational structures usually remain hidden. In Germany and in Europe, organised crime groups appear in myriad forms. National and locally based groups with tight leadership structures and an international action radius exist side by side with homogenous, ethnically defined groups, whose leaders are located outside of Europe. Other groups, such as organised biker gangs, define themselves by distinctive organisational modalities or codes of conduct. A special problem is posed by the loose, professional networks without any hierarchical superstructure which come together as the need and circumstances dictate and whose ephemeral nature calls for specific investigatory and intervention techniques. A problem not to be underestimated because of its economic harm potential is organised crime inside legal enterprises. In this form, criminal networks either succeed in establishing themselves in such a way as to escape notice by enterprise monitoring or enterprises are founded directly as covers to disguise organised criminal activities including money laundering. Europol estimates that there are currently some 4000 OC groups active in the EU.

The Situations Reports published annually by the BKA in Germany make possible a quantitative assessment of developments.¹ The situation described is similar to that of the EU as a whole with the following crimes in the forefront: drug trafficking (34.6%), property crime (17.1%), white collar crime (13.7%), smuggling and trafficking with human beings (approx. 15%)². Low-risk counterfeiting of commodities and trading or smuggling with these is still on the increase. The grossly oversimplified conclusion can be reached that crime groups are basically endeavouring to minimise risks and maximise profits. Hence the organisational forms their activities take are influenced by the actual or assumed effectiveness of crime prosecution by national authorities or international cooperation.

In the more recent past, developments such as the opening of the European single market, worldwide liberalisation of trade and progress in the areas of transport, information and communications technologies and the market developments associated with these have led to a pronounced internationalisation of organised crime. Criminal networks weigh up the risks and possibilities offered in various countries and use one country, for instance, as a strategic centre, carry out their activities in a second country, organise money laundering in a third, make use of registered enterprises in a fourth and build themselves a legal existence in a fifth country. Successful investigations in one country often lead to specific activities being transferred to another. The challenges of organised crime are thus both local and global. Crime investigation bodies must have corresponding action tools at their disposal if the fight against organised crime is to succeed.

Generalised descriptions can only serve to give a first impression of the phenomenon. It will also be difficult to arrive at a generally accepted definition of organised crime.³ Ultimately this is a term which in practice serves as a functioning categorisation within which phenomena can be described or more narrowly defined⁴. The question is also raised in this context of how serious a criminal act should be in order to be categorised

1] There are now also in some Länder such as North-Rhine Westphalia and Brandenburg joint situation reports issued by the police and public prosecuting office which by their very nature reflect the situation from more than a police perspective.

2] Separate Situation Reports are devoted to these two crimes, there is a joint Situation Report of BKA and Federal Police on illegal immigrant smuggling.

3] In 1990 in Germany a definition was developed by a joint working group of judicial and police authorities (GAG) which is the basis for evaluating a concrete case as “organised crime”.

4] Walter Gropp/Barbara Huber: Rechtliche Initiativen gegen organisierte Kriminalität, [Beiträge und Materialien aus dem Max-Planck-Institut für ausländisches und internationales Strafrecht Freiburg, Volume 5 84] Freiburg 2001.

as organised crime. The Federal Criminal Police Office (BKA) introduced the term "OC potential" as an objective instrument of measurement for this purpose and the term lays down "general indicators for recognising OC relevant facts" on a scale going up to 100 points, with most groupings in Germany reaching the middle of the scale.⁵

At the European level a basis is required in order to be able to compare trends, legally justify the use of special investigation methods or cooperation associated with this. The joint European definition of organised crime put forward by the Commission and the framework legislation are limited to setting down rough benchmark data such as the identification of certain forms of crime in combination with the determination of upper and lower limits for the corresponding national punishment assessments.⁶

Since the year 2000 Europol has provided situation reports on organised crime in Europe based on contributions from member states but with the reservation that the data are only comparable to a certain extent⁷. In 2006 this annual report was upgraded to an analysis of threat which is now based on an independent evaluation of data and findings supplied by EU member states.⁸

It is difficult to estimate the amount of damage caused by organised crime. The dark figure is high, meaning that figures available tell us little. The estimates of the United Nations Office on Drugs and Crime (UNODC) can be consulted as an indicator. These state that approx. 2-3% of GDP are the result of organised crime activities. The International Monetary Fund similarly estimates that some 2-5% of global GDP are "laundered", i.e. originate from illegal sources. If these estimates are projected onto the EU, the damage according to Europol could amount to around 270 to 730 billion US Dollar. In the German National Situation Report for 2005 in contrast the damage arising from organised crime is shown as a mere 842 million, only marginally different to the 1999 figure (1.4 billion DM). Even if the UNODC estimate is to be regarded with caution, it nevertheless becomes clear that we are dealing with a phenomenon that has only been marginally grasped and one which cannot be adequately analysed and assessed on the basis of existing findings.

Their survey logic makes nationally generated data in the first instance a record of the work of the prosecuting authorities. The official figures for organised crime are to a large extent dependent on the intensity of investigations. On the one hand, organised crime becomes known to a much larger extent than other crimes through the activities of the law enforcement agencies, on the other hand it is the investigating resources that determine the number of crimes solved. The majority of OC proceedings in Germany are processed in a time-consuming way by police and customs authorities and specialised public prosecutors set up specifically for this purpose. If funding remains constant, the level of official figures will also remain unchanged. Hence developments in the organised crime sector which can be statistically measured are largely determined by the amount of resources made available. The actual extent of organised crime and the direct and indirect damage it causes are considerably higher than the statistics.

Against this backdrop, some generally statements can be made in the way of a rough assessment of the problem of organised crime in Germany and the EU:

(i) Organised crime in Germany – and all over the world – occurs mainly in those areas

5] In 2005 the average was 42.3 points. Only approx. 13% of groups examined get over 60 points.

6] Council Proposal for a Framework Decision on the fight against Organised Crime COM (2005) 6, final as at 19.1.2005. Political agreement has since been reached on this proposal. Formal adoption by the Council is expected early 2007.

7] <http://www.europol.eu.int/publications/EUOrganisedCrimeSitRep2004.pdf>

8] <http://Europol.eu.int/publications/OCTA/OCTA2006.pdf>.

where the anticipated profit is highest. A few years ago financial centres like the Rhine-Main

area or the "Rhine track" in North-Rhine Westphalia were the preferred arenas, recently a clear concentration on Berlin has developed in the regional distribution of OC proceedings.⁹

(ii) Organised crime in the EU is more common in conurbations than in rural areas. The demand for illegal commodities is usually greater here, crime opportunities are more favourable and the possibilities for acting in conspiracy greater.

(iii) It is generally relevant to distinguish between domestic and foreign or non-EU actors. As a rule national groups head the list of organised criminals although, as in the case of Germany, foreign groups as a whole perpetrate most of the crimes recorded, i.e. approx. 60%.

(iv) Domestic and "successfully integrated" groups tend to have adapted better to lawful social and economic structures, are able to alternate at ease between their worlds and can mould their "habitat" to their requirements.

(v) Where established groups function smoothly and invisibly, newly formed groups tend to be more obvious in the way they operate, sometimes including the use of violence. This statement is equally true for established groups who are defending their "market".

(vi) Low figures in the statistics on organised crime or crimes of violence do not, however, indicate an absence of organised crime. They can equally well be an indicator for functioning networks and for the lack of impact of society's defence mechanisms.

At this point a disconcerting conjecture is raised: we do not know sufficient about organised crime to enable us to estimate its effects on our society. It has to be assumed that the dangers posed by organised crime are being underestimated.

9] cf. Federal Criminal Police Office: National Situation Report on Organised Crime 2005, p. 12

II. The Policies of Germany and the European Union – “greater effort needed for a decisive break-through”

The basic elements of Germany’s security police are set out in the first of the periodic Security Reports dating from 2001. This also mentions organised crime, but as *one* crime category among many.

II.1 German Institutions and Actors

As the Federal Republic is a nation with a federal constitution, there are many different actors in Germany engaged in the fight against organised crime. In addition to the police force in the federal states, prominent actors include the Federal Criminal Police Office (BKA), the Federal Police and the Customs. Standardised or agreed upon procedures and methods used in combating crime are laid down in bodies in which the (criminal) police forces at national and state level are represented.

Issues of fundamental relevance for the cooperation between the forces are regulated by the “Working Group of Heads of the State Criminal Police Office and the Federal Criminal Police Office” (AG Kripo) unless an issue needs to be clarified by overarching (political) authorities. Below the AG Kripo level there are bodies to deal with specialised issues, as for instance the Commission on Organised Crime (KOK), where public prosecutors regularly participate in meetings. The OC public prosecutors themselves also conduct meetings at a national level, in which KOK representatives also participate.

The “Joint Working Group” of judicial and home affairs authorities from the federal states conducts meetings in which the Federal Interior Ministry and the BKA also take part and is responsible for policy issues involved in OC suppression which are relevant both for the police and the judicial system.

This may seem to the impartial observer to be an array of cumbersome authorities, but in reality it is an efficient set of instruments. Years of experience, good relationships between decision makers plus short communication channels result in the right decisions being made. The system also ensures methods on a nation-wide basis without these having to be set in place by a superordinated body. Compatibility of investigation methods is guaranteed by means of (nationally) standardized regulations, specifications, training projects, etc.

Organised crime is the subject of many and varied legislative initiatives. Over the past four years alone, the Federal Justice Ministry has issued 152 press releases on the subject.¹⁰ They dealt with, for example, the implementation of EU directives and agreements on cross-border cooperation, amendments in substantive criminal law such as those on trafficking with human beings and the optimisation of formal criminal law, for instance in skimming of profits.

In June 1997 the Conference of Interior Ministers adopted the IMK Action Programme dealing with practical suppression measures. After reviewing the actual situation at the time, the AG Kripo decided on its implementation in December 1998. An evaluation conducted in 2002 revealed inter alia that not all measures were being carried out in the same way everywhere, that in some areas differing organisational solutions had emerged and that use of resources differed. The outcome was that deviations were tolerated if these were objectively justifiable. Where deviations were not considered acceptable, improvements were subsequently initiated via the bodies responsible.

¹⁰] c.f. <http://www.bmj.bund.de/enid/0/0/Presse/Pressemitteilungen>, Status 02.10.2006

Apart from this, the state of Baden-Württemberg conducted a survey in 2002 on the progress made in the fight against organised crime. To this end a representative volume of files on OC proceedings were consulted, examination was made of the measures adopted, the time and effort spent on investigations and the results. The findings that emerged from this investigation are still influential today – and not only for the authorities in Baden-Württemberg.

II.2 European Initiatives, Cooperation and Institutions

As stated in the government's contribution to the review of the "Hague Programme" of 15.09.2006, the German government has undertaken to improve cooperation in the fight against crime. In this context it undertook to implement the measures planned "effectively and comprehensively in the period foreseen"¹¹. It also spoke out for "more intensive EU support for national efforts [...] in the fight against organised crime". On the subject of police cooperation, it suggested that cooperation forms laid down by the Prüm Treaty¹² should be incorporated in the EU legal framework.

Investigation proceedings carried out in a team are described in more detail in the EU decision on "Joint Investigation Teams" and even in the draft European Constitution.¹³

Yet to date proceedings involving several member states are the exception. They are often impaired by legal, organisational and psychological obstacles. Hence a process of gradual implementation is recommended which could take the following form. Where the main focus of criminal activities is ascertained in one member state, it is agreed that the police and public prosecutor in this state mastermind investigations and are supported in their work by colleagues from other member states involved. The officials in the other states will then provide assistance, either by providing on the spot support, or by collecting evidence "at home" and making this available to the authorities who are conducting investigations. This admittedly does not exhaust all the possibilities offered by European law, but at least three short-term objectives are reached: criminal proceedings can be conducted at the same standard as hitherto and using customary routines while at the same time training cooperation "on the case" and enabling the working methods of national forces to be synchronised.

Members of criminal organisations operate beyond the borders of the EU, meaning that bilateral and/or multilateral cooperation forms with partners outside the EU must be sought. Germany has concluded agreements on cooperation in fighting organised crime with a number of states at the bilateral level.

The "Russo-German Working Group" gives a practical example of how such agreements can function in reality. The Federal Criminal Police Office and the Interior Ministry of the Russian Federation organise a bi-annual conference alternating between Russia and Germany. This gives interested German and Russian police forces and public prosecutors a platform on which to present cases which are of relevance to the other country and which cannot be solved "through conventional channels" at all or not within an acceptable timeframe. Those departments in the other country responsible for a particular case are then invited to attend on the basis of case records made known in advance. In a two to three day period the case is discussed by a small group of officials from relevant departments and solution proposals are presented to the plenum.

11] Council of the European Union, Doc. 14292/04 of 5 November 2004, Annex 1.

12] The Treaty of Prüm was signed initially by seven EU members on 27 May 2005. The Treaty envisages an intensification of transnational cooperation in the fight against terrorism, crime and illegal migration, particularly with regard to the optimisation of reciprocal data access. Four further EU states have subsequently announced their accession to this Treaty.

13] c.f. details in Chapter 3.4, No. 5

Russia is also represented in the "Task Force on Organised Crime" for the Baltic Sea region. This body has evolved into an important forum for cooperation in the Baltic region, not least because it brings together EU members, EEA states and Russia in an international cooperation structure. The main emphasis of work is on the exchange of crime-related information and concerted operations by police, customs and border police agencies in the participating states.

Other supranational bodies on combating organised crime in which the Federal Republic of Germany is represented are notably the Financial Action Task force (FATF) as the key international cooperation body on money laundering, the UN Commission on Crime Prevention and Criminal Justice which is responsible inter alia for the "Global Plan of Action against Organised Crime" and the Lyon Group. This latter was initiated by the G8 heads of state and government in the form of a high-level group of experts after these experts had identified organised crime as a global peril during their summit in Halifax in 1995. This group is mandated to study and evaluate international agreements and mechanisms and submit proposals for remedies of any shortcomings.

On the basis of the Amsterdam Treaty¹⁴, European political planning mechanisms are underpinned by strategy and action plans in the area of "freedom, security and justice". The Plan of Action absorbs the specific measures¹⁵ proposed by the European Commission and has come to be regarded as the sole point of reference for the planning and implementation of European policies on suppressing organised crime.

One of the key items on the programme was the creation of standardized or more compatible legal framework conditions within the EU. For this purpose a framework decision on the combating of organised crime was adopted in January 2005 (see footnote 4). Since then there has been a uniform European legal framework, albeit in a loose form. It complements the UN agreement against transnational organised crime, the "Palermo Convention" that came into force in 2003 and to which the European Community acceded in May 2004¹⁶.

Over the past few years the institutional framework has altered considerably with the creation of a number of new European authorities such as Europol, Eurojust and Cepol.¹⁷ Some time will elapse before these institutions work effectively and in concert with others. And as long as the finality of European police and judicial cooperation remains controversial, interaction between the European and the national levels will continue to be tense.

Europol enjoys a special position in the fight against organised crime at the European level. As it has no investigatory authority of its own, it is restricted to collecting information relevant to investigations. But as long as the flow of data from member states remains limited, it cannot make sufficient use of its potential. One logical step forward would be to turn Europol into a European Crime Office. In the light of the political dimension of a project of this nature, this seems to be a remote prospect, notwithstanding the fact that Europol as an institution is no longer questioned.

14] The Treaty of Amsterdam was adopted by EU heads of state and government on 16 and 17 June 1997 and signed on 2 October 1997. It came into force on 1 May 1999.

15] Communication from the Commission "Development of a strategic concept on tackling organised crime", COM (2005) 232, final as from 2.6.2005.

16] The UN Convention against Organised Crime, also known as the Palermo Convention, came into force on 29 September 2003 after being ratified by 40 countries. The related Protocol on trafficking in human beings came into force on 25 December 2003, and the protocol on smuggling of migrants on 28 January 2004. The protocol on firearms did not come into force.

17] There is a comprehensive overview of this in: Ulrich Sieber/Franz H. Brüner/Bernd von Heintschel-Heinegg/Helmut Satzger, *Handbuch zum Europäischen Strafrecht*, Max Planck Institute for Foreign and International Criminal Law, Freiburg, appears Spring 2007.

Eurojust has been in existence since 2002 and aims at improving cooperation between the member states' prosecution offices at cross-border investigations against felony and organised crime. Similar to Europol, Eurojust's role and function are provided with a question mark. The Constitutional Treaty put on hold, included the possibility to further develop Eurojust into a European prosecution office.

CEPOL was founded 2005 with the aim of giving national higher ranking police officers European training since European aspects are gaining importance in the everyday work of national forces.

In addition there are now numerous other institutions active in the security policy area¹⁸, although all of them are caught in the conflict area between national sovereignty and European integration or transferral of power

II.3 European Policy Priorities

On the basis of the aforementioned Council decisions and Actions Plans, the following priorities for a European policy on combating organised crime emerge:

(i) In 2006 the Europol Situation Report was upgraded to an analysis of the threat in Europe. It is based on an independent evaluation of data and findings provided by member states (see footnote 6), and makes possible an objective estimate of threats, weak points, trends and areas where interests overlap.

(ii) A European policy planning and implementation mechanism is being planned with which agreement on common priorities can be reached based on threat assessment, with these priorities then being implemented at the operational level and their effectiveness subsequently evaluated. This cyclical process is intended to be the locomotive for a European crime suppression policy.

(iii) An important area in the development of European policy concerns information management between investigating authorities on the one hand and access to data not collected by police forces. There is a proposal at the European level for all European police forces with equivalent competences to have access to all those data to which the national police also has access.¹⁹

(iv) There are still some legal obstacles in the immediate fight by investigation authorities against criminal groups, particularly in relation to the effectiveness of investigation tools targeting organised crime specifically, for instance the use of joint investigation teams²⁰, undercover investigators or surveillance of commodity deliveries. There is also a long way to go before the joint investigation processes as foreseen in Part. III-257 of the draft European Constitution are in place.²¹

(v) Financial investigations play a special role in the fight against organised crime. The tracing of financial transactions "upwards" could become an effective instrument in the fight against organised crime as long as transparency and KYC in the finance sector is

18] A new European agency which is rapidly gaining in importance is, for example, Frontex, located in Warsaw, Poland and responsible for the management of the EU's external borders. Another relevant agency, ENISA, located in Heraklion, Greece, deals with network and information security. Two important European networks for information exchange are the European Judicial Network and the European Crime Prevention Network.

19] See the Commission Communication to the Council and the European Parliament on measures to be taken to combat terrorism and other forms of serious crime, in particular to improve exchanges of information, COM (2004) 221 final as from 29 March 2004.

20] Framework decision by the Council on Joint Investigation Teams, Official Journal of the European Communities L 162/1 of 20.6.2002 (2002/465/JI).

21] A detailed analysis of the current incompatibility of OC investigations is given in: Gary Linton/Bridget Munro/Martin Youngs: Closing the Gap in Policing Organised Crime – A European Perspective, Falcone Project 2002.

increased sufficiently and European cooperation intensified, including the formation of international investigation teams.

(vi) The same applies to crime-susceptible business sectors: transparency of market processes and the documentation of transactions increases the traceability of criminal activities. Short-term gain considerations generally argue against overloading the markets with “bureaucratic” procedures. But a long-term cost-benefit analysis could well lead to the conclusion that improved procedures will force illegal actors out.

(vii) In the area of criminal law cooperation there are two main policy threads. On the one hand, there is a need in some sectors (i.e. trafficking in drugs and human beings) to harmonise European court rulings so that loopholes can be filled. On the other hand, cooperation between law enforcement agencies needs to be optimised. Given that harmonisation of criminal law can only be achieved politically to a limited extent, the principle of mutual recognition of judgments and decisions opens up possibilities for increased efficiency in cooperation.

The European arrest warrant scheme was the first step in this direction, many more followed and will continue to follow.²²

(viii) International cooperation will have an important role to play in the light of the diversification of organised crime. Cooperation with third countries is ponderous and protracted and the relevant agreements at the UN level are of a more declamatory nature. Sometimes poorly developed administrative cultures and communications hazards make reliable cooperation at the operational level difficult to come by.

Its experience in the policy area “freedom, security, justice” has led the EU Commission to the conclusion that the present long-drawn out decision-making processes in the so-called Third Pillar of the EU are no longer adequate in the light of the scale of terrorism and organised crime. Hence the Commission supports the introduction of a common decision-making procedure based on a qualified majority.

²²] Commission Communication to the Council and the European Parliament: Mutual Recognition of Final Decisions in Criminal Matters; (COM/2000/0495 end).

III. Scenarios – Between European Integration and Safeguarding Sovereignty

III.1 Further developments in OC

Development trends for organised crime in Germany and Europe can be described as follows:

1. First it can be assumed that criminal actors will continue to be active in the traditional crime areas (drugs, property, economic crime, offences revolving around night life, trafficking and money laundering. They will continue to make use of the criminal networks and the corresponding infrastructure and attempt to reduce the risk of prosecution by becoming more professional.
2. In addition to this, new illegal market segments will be opened up, sometimes with the aid of innovative criminal practices. The internet offers numerous possibilities of acquiring fraudulent material gain. The physical location of the perpetrators is of no relevance. Any place in the world can become a crime scene. It can be stated today that various criminal groups are turning away from traditional crime settings and – in the spirit of profit maximisation - are on the lookout for “business sectors” offering even more profit and with less hazard involved.
3. Restraints posed by language, communication, transport and trade will continue to decrease, mobility and flexibility will continue to grow. As in legal business life, modern information and communications technologies will be used increasingly for faster information transfers, as planning instruments and as logistic aids. This means that alliances between internationally operating criminal groups on the one hand and local actors on the other will continue to grow. The distinction between national and non-national groups will lose its relevance.
4. On the international market today actors of very different origins and with a variety of financial and organisational structures are competing with one another. Information on competitors, trends, gaps in legislation, funding and tax systems and the mobilising of state support benefits will gain in importance. Complex international corporate strategies will lead to an increasing danger of criminal structures developing inside corporations or to methods or even structures of organised crime being used to illegally influence market processes.
5. In the process of growing globalisation criminal groups will change location more quickly – but not automatically their field of operation – in pace with more effective working on the part of police and judiciary, both in the national and international context. This means that international cooperation beyond the borders of Europe will continue to become more important.
6. Globally networking markets mean that in future we must expect our political and economic system to become more crisis-prone. As long as the conflict potential in the world between societies and nations remains high, there is a continuing danger of local conflicts exploding and terrorist attacks being used as a means to achieve political or social objectives. In this context too an alliance between terrorism and organised crime can be anticipated. The destabilising effect of international organised crime on weak third countries which is irrelevant in Europe today should nevertheless not be ignored, if only in the interests of security.²³

23] It is no coincidence that the European Security Strategy “A Secure Europe in a better World”, adopted on 8 December 2003 (15895/3; PESC 787), identifies the problems of organised crime and weak state structures as two of five central challenges for European security, see: <http://ue.int/uedocs/cmsUpload/o31208ESSIIDE.pdf>.

III.2 Further Developments in the fight against OC

In the light of the developments in organised crime described, effective suppression will depend on the extent to which European and international structures can be developed to face up to this internationalisation in its varying guises. Simultaneously it will be decisive that local and national prevention, investigation and law enforcement systems are effectively organised and horizontally networked and interact smoothly at the international level.

III.2.1 Germany

If one restricts oneself to basing suppression concepts solely on the available official figures, one can only react to crimes which have become known. But in the area of organised crime, as in the business sector, it is important to look forward and adjust to emerging "markets". One tool for doing this is the building of scenarios bringing in external expertise. If experts on social change, technical developments etc, develop scenarios together with the police on the types of crime to be expected, it becomes possible to keep up with offenders and take immediate, promising countermeasures when a new phenomenon occurs. First attempts in this direction give cause for optimism.

Experiences with the Nazi dictatorship in Germany have led to a strict separation of police and intelligence services, which is not the case in many other countries. This is not the place to go into details of pros and cons. The fact is that in the area of combating terrorism, an attempt is now being made to bring together information held by varying authorities. Similar developments are required in the fight against organised crime. It is difficult – from the economic viewpoint at the least - to live with the knowledge that police in one place are researching urgently for findings which have long been available to authorities elsewhere.

It is self-evident that data protection needs to be given special consideration in this context.

Organised crime groups are in no way thwarted by national borders between countries and it goes without saying that the borders between the states within Germany pose no problems for them. In spite of this, most OC proceedings are policed by the force in one federal state, although many cases would lend themselves to processing by a team of investigators from several states. Joint analysis and investigation units from Federal Police and Federal Criminal Police Office are also conceivable. Unfortunately this is seldom the case. There is cooperation between the Federal Police and the Federal Criminal Police Office in the field of trafficking offences, but this is often laborious. The Federal Criminal Police Office and the customs even work together under one roof in combating money laundering, but there is also much room for improvement.

The secondment of officials from one authority to another also occurs too rarely, especially where state borders will have to be crossed or different national or state authorities are involved. This is regrettable, since feedback on this – at least on the part of the officials – is generally positive.

Experience with operations carried out at a supra-state level is also generally positive and occurs fairly often in the field of organised crime, as in search operations, securing evidence, etc. In these cases the operation is usually planned by one authority and then often carried out in several federal states simultaneously.

Foreign police officers visiting German police agencies on an observer basis and vice versa are seen as very positive experiences. For years now scholarship holders not only from developing countries have been spending time with German police authorities and later become contact points particularly in the organised crime area when cooperative measures are called for.

In addition to this, joint projects between two or more EU member states have often proven useful in promoting lasting cooperation. For example there is long-standing contact between German and Italian law-enforcement agencies aimed at the concerted combating of Mafia-like groups, French, Spanish and German authorities conducted a joint project on combating Russian OC groups and a project involving the Netherlands, Belgium, Great Britain and Germany was targeted at combating Bulgarian trafficking in human beings. Projects like these have an important side effect in addition to the specific stated objective and that is on the case learning – not only theoretically – how the fight against criminal networks is organised in other European countries, what restrictions the partner service has to deal with or where it can operate better and more successfully. Ideas gained in this way can often be used in an official's own working area.

III.2.2 EU

The European capacity for action needs to be improved to keep pace with the transnational character of organised crime. A legal basis covering this aspect is planned as part of the draft Constitution treaty.

The Amsterdam Treaty already foresees transition to the principle of majority decisions. This could lead to more efficient and far-reaching decisions, i.e. including transferral of competences in the analysis and investigation of more complex cases and formulation and implementation of European policies towards third countries. But a step of this kind must have the support of all 25 member states and is correspondingly contentious.

A rise in organised crime can ultimately be anticipated if European integration and political networks are not strengthened in the areas of justice and home affairs. Improved cooperation and the resultant success of investigations could, however, also lead to evasive reactions. Offenders could be motivated to further internationalisation or diversification of their activities, especially where third countries with weak legal structures offer withdraw options. This scenario will mean that more will be expected from an improved international legal system.

Whether and how European policies on the prevention and combating of crime are continued and expanded is a central variable for assessing further developments:

(1) At the moment decision-making processes are laborious, the transfer of national competences is not taking place or only very gradually, the creation of intergovernmental networks has preference over the building of integrated structures. Against this background the scope for integrated policies in Europe would appear at the moment to be limited.

(2) Closely linked to this is the democratic legitimisation of deeper European cooperation. Steps towards integration in the area of home affairs and justice have far-reaching implications, particularly in relation to parliamentary control, civil liberties and the future balancing of internal and external security, and this raises the question of appropriate consultation and information involving national parliaments, stakeholders and citizens.

(3) Also linked to this catalogue of issues is the question of the equipping and supply of resources for international cooperation at the European, national and local level.

(4) A further key criterion for assessing policy development in this area is the connection between external and internal security and how this is articulated in any future broad-ranging European policy.

In all likelihood the pressure for more effective policies at the European level will continue over the next few years. This will probably not, however, lead to a swift “quantum leap” in the combating of crime since there will still be strong national opposition to a transferral of key national competences. This means that networked policy development and implementation will gain in importance, making it possible on the one hand to pursue common interests in an integrated way and on the other hand keeping open local and national scope for action.

The Hague Programme of Action²⁴ currently reflects minimum European consensus. But every single item is highly controversial in the light of a protracted decision-making process based on unanimity. Any progress made is gradual and generally unsatisfactory. The gap between political acclamation and the actual will to cooperate is too wide.

More progress is conceivable, in particular in the wake of a boost in the combating of terrorism. In this respect there could even be realistic hope, in the event of the European draft constitution failing to get off the ground, of European crime fighting policies becoming better integrated and better networked, either on the basis of a “fall-back constitutional solution” consisting of deepened cooperation between those members states willing to integrate or the currently favoured communitisation of the “Third Pillar” on the basis of Article 42 TEU.

III.3. Crime prevention

The outlook for effective policies to prevent (organised) crime is relatively inauspicious. At the European level there are at present some mild attempts to promote effective prevention standards in the relevant economic and administrative sectors. There is no indication of how the primacy the EU attaches to competitiveness can be reconciled with requirements which could reduce profits. Misuse in the area of public procurement and corruption is not pursued with the intensity necessary to bring about a real reduction in criminal incentives. A determined and locally based policy of drying out organised criminal structures, for which the Netherlands provides a remarkable example, tends to be the exception in the EU. In Germany efforts in this direction have to date been somewhat half-hearted. But the issue was taken up during the German EU Presidency in 2007.

III.4 Between communitisation and the preservation of national sovereignty

The relative neglect of prevention and combating of organised crime at the national and European levels gives little cause for optimism for the chances of future policy perspectives. In principle, the European Union provides the right framework for policy formulation and evaluation, given the highly-developed state of institutionalisation of crime. Any national initiatives taken unilaterally cannot succeed in the light of the generally accepted need for networking in the areas of exchange of information, threat evaluation, investigation cooperation and policy formulation.

²⁴] c.f. Chapter 2

Should attempts to make decisions taken at the European level become more effective by introducing qualified majorities, based either on a future European constitution or on an alternative “fall-back” treaty, the kind of progress in the fight against organised crime will become conceivable which is unthinkable under present circumstances.

This scenario is opposed, however, by the firm will of EU member states to retain their national sovereignty. Although the acceptance of a need for swift and fundamental political reforms in the European internal security sector is currently being relayed via the threat of terrorism, organised crime is seen more as a marginal phenomenon. Lack of knowledge on the scope, risks and dangers of organised crime currently lead to the assumption that the chances for a mobilisation of political will on this topic are slight. A fundamental strategic and public opinion forming debate could bring about a change.

IV. Options for Action – the movement towards “strategy-driven policy making”

IV.1 The importance attached to OC combating in our society

There is a fundamental question to be raised on the importance attached by society to the fight against organised crime. Contrary to popular belief, violent conflicts are not the rule; organised crime can be violent but primarily has a commercial focus. Unrest is bad for business. As long as criminal organisations function smoothly and little is known about their ways of functioning, fighting them remains a social problem difficult to deal with. But today’s mobility means that gaps in policy tend to lead more to geographic shifts than to any sustained reduction in crime.

IV.2 Strategy for internal security

An effective fight against organised crime calls for agreement on the means to be employed which should also include all the different sectors in society.

The fight against organised crime must be an integral part of the public safety issue with the complex array of themes and fields of action involved, and thus an effective strategy can ultimately only gain legitimisation if anchored in a broad, socio-political debate. This strategy should be developed at a European level, define the framework for national consultations and policy development and form the basis for enhanced security cooperation with third countries.

A strategy of this kind should embrace issues of institutional competences, organisation of the exchange of data and information which also safeguard civil liberties, but also quite specific questions involving cooperation between the judiciary, police and security forces. It could supply the necessary framework for mobilising the resources required for planned reforms without neglecting the rights of citizens in Europe to information and democratic participation.

IV.3 The need for reform in Germany

a) Introduction of intelligence-led risk and threat assessments

An effective approach to organised crime requires that its magnitude can be reliably assessed. Data contained in official figures are not a reliable measure of the real scope of the phenomenon. One important task is therefore further development of research on the dark figures which is not currently able, with the means and methods at its disposal, to supply the necessary data on organised crime.

At the same time, the crime fields processed by law-enforcement agencies should be assessed in relation to the damage they can inflict on society. In this process, the fight against organised crime should have a ranking in line with its threat to society. The results of this ranking should be reflected in the allocation of resources.

b) Intensification of cooperation between authorities at the national and state level

Since basic responsibility for internal security is accorded by the Basic Law to the states in the federation, it follows that the fight against organised crime in Germany is decentralised. OC investigations are dealt with according to standards that are modified according to the peculiarities of the case. The officers entrusted with OC proceedings

are usually specialists with extensive experience in criminal investigations and who have received special training. In spite of this, individual investigation complexes differ as to the resources used, the course of investigations and the success of investigations. This has to do with the specifics of the case but could also be linked to the fact that in one case means and methods are more efficiently interlocked than in others. As general rule, methods such as benchmarking and best practice should be available, terms that are not very widespread in the German police force – not in this sector at least. Comparison between means and practices – including across state borders – and measuring actions against the best practiced are signs of professionalism and should be in standard use.

German attitudes are often perceived as a many-voiced choir beyond our borders too. What is required is agreement on joint German policies on the fight against organised crime that is binding on all the actors involved, at least as far as it is represented to the outside world. This demand is not utopian, as has been demonstrated by the example of the fight against terrorism, where a uniform policy is emerging from the pressure of events.

Of course internal policy differences should not interfere with the ability to act on a European level. German experience with managing different perspectives can also be very useful for Europe. If the division of roles within Germany and the situation in Europe are compared, there are several parallels. In both cases partners are at work with differing experience and interests. In both cases central bodies are not allowed to enforce a uniform policy against the resistance of individual players. Yet in both cases a common position must be formulated and represented vis à vis third parties.

c) Creation of specialised criminal court divisions

The processing of substantial OC cases by the judiciary remains unsatisfactory. The relevant basis for assessing organised crime cases in Germany is Section 129 of the Penal Code (StGB) (formation of criminal organisations). A look at criminal law in practice reveals that this section is regularly referred to when justifying criminal proceedings, but a sentencing according to Section 129 StGB is seldom passed. One reason for this is that high court decisions apply very stringent criteria for the proof of certain constituent elements of a crime. Quite apart from this the penalty incurred of five years imprisonment at the most seems unduly low – measured against the degree of unlawfulness of the crimes.

If the activities of criminal organisations result in a trial, offences are often singled out to be dealt with. And here it is often the case that the main focus is on offences which are particularly significant and where the objective and subjective facts of the case can be easily proven. Offences which appear to be less important or those where the marshalling of evidence is laborious and difficult then fall by the wayside. This way of doing things based on lean proceedings does not lend itself to the peculiarities of organised crime. At a trial the details and connections produced by investigation are either not taken into consideration or – as one expert observed – “pushed back into the dark figures area”.

In view of the above, it would be desirable to follow the example of white collar crime and establish specialised criminal divisions to deal exclusively with serious and organised crime. Should this come about, the emphasis given in future to lean proceedings would have less weight and the uncovering of criminal structures more.

d) Development of a broad-based crime prevention policy

In the area of prevention, individual fields of organised crime are addressed, like for instance drugs. At the same time insufficient progress has been made in sensibilising the

population to organised crime as such and the threat emanating from it. Hardly anyone in the general public has any idea of the extent to which society and hence the individual citizen is threatened by criminal organisations. Prevention of crime by the police and the German Forum for Crime Prevention DFK (in addition to the many other initiatives and institutions involved in prevention) do not achieve the desired effect. For the DFK to integrate prevention initiatives at national, state and local levels is without doubt the right approach. But is the average citizen aware of this? Does he or she learn what they can do to minimise the likelihood of offences being committed?

Cooperation between law enforcement agencies and industry has a preventive aspect. Joint initiatives in the prevention of organised crime range from the general exchange of information to specific cooperation between the police and the security officers in companies to close cooperation between motor vehicle manufacturers and prosecuting authorities in developing security devices in cars and in the tracing of (upmarket) vehicles.

A tricky question is still whether and to what extent personal data can be exchanged. It is clear that this cannot be a "one-way street" with industry being the sole supplier of data. But it is also well known that the transmission of personal data by authorities is subject to restrictions for reasons of official secrecy and privacy. These problems can only be solved by legislation.

IV.4 Need for action at the EU level

a) Policy planning and implementation

At the European level there are numerous action plans on organised crime or related issues. These are largely – but not entirely – subsumed under the five-year "The Hague Programme". The programme remains in need of improvement and development, but it can nevertheless provide initial values and reference points for German political initiatives, as is already the case at the EU level. Above all, the Hague Programme is not a political framework for the development of a coherent European policy on home affairs. Clear strategic targets are required if on the one hand planning reliability and orientation for national actors is to be guaranteed and on the other hand incompatible policy developments between the member states avoided. A strategy of this kind should be developed jointly between the member states and the competent EU authorities.

The effectiveness of any future policies on justice and home affairs is also closely linked at the macro level with the future development of the European draft constitution. The European reform debate should be intensified since a reform backlog could result in high costs in terms of security policy.

b) Information management

Below this level, the question arises in particular as to European data management, access by investigators to data collected for purposes other than police use, unlimited but controlled comparison of data between the services of the various member states, etc. To bring this area forward, the member states need common standards to characterise or implement policies, a more intensive operational cooperation and the implementation of confidence building measures.

The gradual building of an "internal security architecture" is based primarily on improved data management as a basis for concrete cooperation. Cooperation in fighting organised crime comes first here. If this policy is to succeed, cooperation between national actors

is once again of decisive importance.

An effective combating of organised crime by member states is in the interest of all legitimate actors. A uniform evaluation mechanism would be useful, similar to the OECD Pisa process in the education sector. The evaluation system currently in use is slow, is not implemented evenly and is also not binding.

c) Qualitative re-orientation of cooperation in criminal law

In the area of judicial cooperation, it would be correct to speak of a reform crisis. Constitutional reservations, in Germany in particular, seem to be guided less by the need for improved cooperation than by formal legal argumentation contexts motivated among other things by the upholding of national legal traditions and related clientele interests. If you on the one hand reject mutual standards and on the other hand question the reciprocal recognition of national legal standards, you begin to go round in circles. This paralysis must be ended. Progress can be made in the mutual recognition of court judgments, orders and evidence if agreement is reached on minimum standards which are objectively verifiable. This should also explicitly include the harmonisation of subordinate legislation.

The financial drying out of criminal networks is one of the most effective measures in the fight against organised crime. The successes registered in Ireland, Great Britain and the Netherlands in seizure and confiscation of capital obtained by intransparent or criminal methods could lead to similarly problem-oriented solutions in other EU countries. The combination of firm civil and criminal law instruments in a standardized approach can make possible considerable progress in the fight against organised crime.

d) Further intensification of police cooperation

There is still the need for reform in intergovernmental cooperation on investigations. What is particularly important here is the effective link-up of national information networks for the purposes of police investigations. Also important are the investigation tools specially adapted to cooperation at the EU level, such as the Joint Investigations Teams (JITs). The network of national liaison officers should also be mentioned, which facilitates intergovernmental cooperation but at the same time weakens the position of Europol. This influenced Denmark's decision to withdraw all liaison officers from EU member states and focus contacts on Europol.

e) Formulation and implementation of European crime prevention policies

In principle crime prevention should be an integral part of a broad European security policy; at present it is only rudimentarily developed. Four areas here deserve special attention:

In the area of corporate and white-collar crime, improved transparency standards can on the one hand narrow the scope for criminal action and on the other hand facilitate the investigation of this crime category.

In the area of primary prevention²⁵ there is a lot of lost ground to be made up for. There are only a few member states like the Netherlands that have developed and implemented a prevention policy aimed at the mobilisation of all relevant actors in society in order to minimise the opportunities for crime.

In Europe there is ample supply of promising projects, often at the local level and tailored to specific needs. It is the task of the European Crime Protection Network (EUCPN) to utilise this wealth of experience for the benefit of a broad public and those responsible for policy formulation.

25] Primary prevention refers to policy measures aimed at preventing the emergence of criminal risks.

As in the organisation of the private sector and non-governmental actors, transparency and the clear allocation of responsibility are also required in the public sector to reduce the opportunities open to organised crime. In general, insufficient importance is attached in the EU and the member states to the combating of corruption.

f) Further strengthening of international cooperation

Safe havens in third countries with corrupt administrative and judicial structures are becoming increasingly interesting to criminal groups. International cooperation on security policy must increase in importance in pace with actors outside the EU choosing the EU as a field of operation and with criminal networks using third countries as safe havens. Hence a further step in the direction of interlocking internal and external security at the European and international level is required.

In a phase where Europol and Eurojust, with the great challenges they face in their areas of mandate, are still in an early phase of their development, they are at the same time called upon to become foreign policy actors in order to create the framework for concrete progress in search actions. A broad scale strategy and geographically focussed policy implementation is called for here and to date we have only seen the beginnings of this.

EU member states' policies at the national level will continue, they are indispensable, but making them known and coordinating them at the European policy level does not function well. National self-interests stand in the way of decisive security policy cooperation with third countries. The current patchwork of national and integrated policies is not in itself a contradiction, but it must be better synchronized and coordinated to form an effective pressure group.

The EU's regional nature is its strong foreign policy advantage. Itself a unique regional project, the EU today is a foreign policy actor that develops effective supranational policy instruments and that makes effective use of this knowledge in cooperation with third countries. In any future regionalisation of international security cooperation, this could possibly be the EU's decisive contribution.

Even today the European Commission plays an important role in the development of cooperation standards in security cooperation with the G8 nations. It is in the EU's own vital interest to continue to develop its competence and take over a creative role including in the UN context. This is one reason why the EU should put more effort into the development of multilateral standards in security policy cooperation.

The world needs a strong European actor who gives multilateral and interregional security cooperation precedence over bilateral policy dialogue.

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