

Introduction to Part III

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Introduction to Part III: The Initiatives of the European Union and the Council of Europe

Cyrille Fijnaut and Letizia Paoli

The authors' contributions featured in this book focus on the situation in the respective European states. Part II explored the situation in terms of organised crime, while Part III focuses on the policies formulated and implemented to contain this set of criminal phenomena. Organised crime itself tends to cross borders to some extent; similarly, the organised crime control policies of all the European states are increasingly assuming a transnational dimension, specifically in two ways. They are increasingly influenced by the control measures adopted by the neighbouring states and, even more profoundly, by the policy that the European Union has been outlining since the late 1980s, either alone or in conjunction with the Council of Europe.

Whereas the introduction to Part II examined the official information sources and the journalistic and academic research on organised crime in Europe in general, the obvious course of action in this introduction is to outline the policy conducted by the European Union, since the European Union has become the leading institution in Europe in the field of combating organised crime.

An issue that will not be considered in any detail is the specific nature of the interaction between the European Union and its Member States in this area. Nor will we try to assess the consequences that this interaction has on the formulation and implementation of the actual policy. In itself this complex issue could be a good subject for a subsequent study. The European Union, and even more so the Council of Europe, are not supranational institutions, certainly as regards combating organised crime, although they do exhibit quasi-federal traits in some respects. The policy that they conduct in this area is ultimately the policy that their Member States have jointly agreed on under their auspices. However, to what extent do the Member States keep to these agreements? And what might this commitment actually entail? Do Member States merely transpose the policy of the European institutions into their national legislation? Or do they actually invest in the national institutions and agencies that have to implement this legislation?

Dissecting European policy on combating organised crime is less simple than it seems. It is actually quite a complex task, because this particular policy spans

various 'routes' that also cross one another, without forming an integrated network. At the European Union level four separate routes can be identified.

The first stems from the aim to guarantee citizens in the territory covered by the European Union – in this context designated as an 'area of freedom, security and justice' – a 'high level of safety' in accordance with the principles and objectives set down in Title VI of the Treaty on European Union: 'Provisions on Police and Judicial Cooperation in Criminal Matters' (Peers, 2000). Article 29 of this Treaty, in which this objective is formulated, states that this cooperation specifically targets 'crime, organised and otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud'. A significant proportion of the policy that the European Union pursues in the area of organised crime is therefore dominated by the way in which police and judicial cooperation between the Member States of the European Union is implemented.

The second route is intertwined with the first in that it relates to the general policy that the European Union has conducted since 1997 through policy plans specifically directed at organised crime in the European Union. Understandably, the successive plans are also partly concerned with strengthening police and judicial cooperation in the European Union, since intensifying cooperation is a pre-condition for controlling this type of crime more effectively. The plans also examine issues that are unrelated to cooperation, however, for example socio-economic policy in urban areas and the prevention of organised crime through cooperation with the business community. For this reason the second route can partly be regarded as a separate route and must be treated as such.

The third route concerns the organised crime policy that the European Union is pursuing as part of its foreign policy. The development of this route naturally stems from the fact that organised crime is not a phenomenon that respects the borders of the European Union. Take drug trafficking for example: on the one hand, natural hard drugs – heroin and cocaine – are being smuggled into Europe from elsewhere in the world; on the other hand, synthetic drugs are being shipped from Member States of the European Union to other parts of the globe. So if the European Union really wants to do something about the various types of organised crime that in certain areas – primarily, transport, finance, communication – involve international forms of smuggling of goods (both illegal and legal), services, people and capital, it cannot confine its activities to taking measures 'on the home front', but is forced to take action 'on the foreign front' as well. And this is in fact what is happening more and more. At the end of the twentieth century foreign policy on combating organised crime was mainly shaped in relation to the then 'pre-accession states' that sought membership of the European Union. In December 2003, within the context of the European Security Strategy, the profile of this policy was raised when it was made an important regular part of the European Union's overall foreign policy.

The fourth and final route intersects the other three time and again. In fact it consists of the specific policy plans that relate – wholly or partly – to particular forms of organised crime. Examples include the Action Plan 2000-2004 concerning the drugs problem and the policy on illegal arms trafficking.¹ Furthermore, the policy plans on combating international terrorism should not be overlooked, certainly after the attacks in the United States on 11 September 2001.² Elements of the general policy that spans the first three routes are of course always taken into account in all these policy plans, but obviously they also propose measures that are specifically intended to control the problems encountered in the respective policy areas. This therefore means that the policy of the European Union on combating organised crime cannot be reduced to the policy that is outlined on this particular front in the general policy plans. We are forced to take into account the policy that is conducted via the fourth route, and also via the first and third routes. This explains why it is such a complicated exercise to adequately define the European Union's policy on combating organised crime.

The complications of the task at hand multiply, however, when the policy that the Council of Europe conducts with a view to combating organised crime is added into the equation. On the one hand, this policy does coincide with that of the European Union, since it can be described as a kind of co-production of the two institutions. This particularly applies to the policy on central, eastern and south-eastern European states that have already joined the Council of Europe, but are not yet Member States of the European Union. These programmes will be discussed in the following pages, when we consider the foreign policy initiatives of the European Union that are organised crime related.

On the other hand, the Council of Europe also takes initiatives of its own accord to combat organised crime and these are intended for all its Member States, whether they are in central, eastern or southern Europe or in western and northern Europe. Though they do not explicitly refer to organised crime as such, several conventions sponsored by the Council of Europe constitute important pieces of the European organised crime control policies, e.g. the European Convention on Mutual Assistance in Criminal Matters and its Additional Protocols (1959) and the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (1990).

¹ With regard to drug policy, see the *EU Action Plan on Drugs 2000-2004*, which can be consulted on the website of the European Union <<http://www.eu.int>>. As regards efforts to combat illegal arms trafficking, see the 'Council Joint Action on the European Union's Contribution to Combating the Destabilising Accumulation and Spread of Small Arms and Light Weapons [...]', *Official Journal* L 191/1-191/4, 19 July 2002.

² See the *EU Plan of Action on Combating Terrorism* (Council of the European Union, JAI 185, Brussels, 11 June 2004).

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As already mentioned in the introduction to Part II, in 1997 the Committee of Ministers of the Council of Europe Member States also set up a Committee of Experts on Criminal Law and Criminological Aspects of Organised Crime (PC-CO), which in 2000 was replaced by the Group of Experts on Criminological and Criminal Law Aspects of Organised Crime (PC-S-CO). Under the authority of the European Committee on Crime Problems (CDPC), the new bodies are required to assess the organised crime control policies of the single Member States and to suggest ways of increasing the effectiveness of the national and international fight against organised crime measures taken in Europe to deal with this type of serious crime. On the basis of this work, the PC-S-CO has prepared several best practice surveys in the field of the fight against organised crime.³

In 2001 the Committee of Ministers issued an overarching recommendation to the Member States, providing guiding principles on the fight against organised crime.⁴ These guidelines cover the whole policy field in this area: from the prevention of organised crime to the use of the criminal justice system to control it and the mechanisms of international police and judicial cooperation. The guidelines not only refer to the use to be made of the criminal law conventions of the Council of Europe but also to the recommendations that were issued in the foregoing years.⁵

Anyone seeking a clear picture of European policy on organised crime cannot overlook the initiatives of the Council of Europe. The important role played by the European Court of Human Rights in Strasbourg should also be highlighted in this context. Through its judgments, this Court has had a major influence in the past few years on efforts to establish the legal limits within which the battle against organised crime in Europe must be waged. One example that springs to mind is the case law concerning the use of undercover agents and anonymous witnesses; another example relates to the direct and indirect interception of communication.⁶

³ Among these, the most relevant are the *Best Practice Survey No. 5: Cross Border Cooperation in the Combating of Organised Crime* (Strasbourg, January 2003), the *Best Practice Survey No. 8: Cooperation against Trafficking in Human Beings* (Strasbourg, September 2003) and the *Best Practice Survey No. 9: Preventive Legal Measures against Organised Crime* (Strasbourg, June 2003). The surveys can be all downloaded from the Council of Europe's website: <<http://www.coe.int>>.

⁴ The *Recommendation of the Committee of Ministers to Member States concerning Guiding Principles on the Fight against Organised Crime – Rec (2001) 11* – can be downloaded from <<http://cm.coe.int/ta/rec/2001/2001r11.htm>>.

⁵ These are, for example, the *Recommendation with Regard to Criminal Policy in Europe in a Time of Change – Rec (86) 8* – and the *Recommendation on Intimidation of Witnesses and the Rights of the Defence – Rec (97) 13*.

⁶ For example, see the case-law summary by Dutertre (2003).

It goes beyond the scope of this introduction to discuss the above-mentioned routes, five in all. We must necessarily concentrate on the following aspects: the way in which the fight against organised crime has taken shape within the framework of the Treaty on European Union (section 1), the general policy of the European Union on combating organised crime (section 2) and the relevance of this fight in the foreign policy of the European Union (section 3).

1. The Fight against Organised Crime in the ‘Area of Freedom, Security and Justice’

Anyone who kept track of the enactment of the Treaty on European Union (Treaty of Maastricht) knows that an enormous amount of effort was devoted at the time to structuring the Third Pillar of the European Union, as it eventually took shape in the provisions of Title VI: ‘Provisions in the Field of Justice and Home Affairs’. Political energy was largely absorbed by questions such as the division of power between the Member States and the various organs of the European Union, and the definition of the instruments that could be used to achieve the extraordinarily vague objective of the Third Pillar.

Anyone who reads these provisions will come to the conclusion that organised crime as such is not explicitly identified as a major problem. There is, however, an implicit reference, specifically in Article K.1.9., which proposes creating a European Police Office (Europol) with a view to improving police cooperation in criminal matters. For those behind this initiative, setting up such an agency was clearly part of a larger plan to increase resources to enable cross-border crime in the European Union to be tackled more effectively. The later Europol Convention 1995 leaves no doubt about this objective. Article 2, paragraph 1 literally states that Europol’s task is to improve the effectiveness of the competent authorities in the Member States and cooperation between them ‘[...] in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime where there are factual indications that an organised crime structure is involved [...]’.⁷

The silence of the Treaty on European Union on this point was broken when the latter was reformulated by means of the Amsterdam Treaty. As part of this thorough revision of the Treaty, the Third Pillar also underwent a complete overhaul, resulting in the formulation of the aforementioned Article 29. Suddenly the fight against organised crime – in all its various guises – was now central to the Third

⁷ ‘Convention based on Article K.3 of the Treaty on European Union, on the Establishment of a European Police Office (Europol Convention)’, *Official Journal* C 316/2-316/32, 27 November 1995. On the subject of Europol, see also Sabatier (2001) and Gless, Grote and Heine (2001).

Pillar and strengthening police and judicial cooperation chiefly served just one purpose: to combat this type of crime. In order to define in detail the principles and objectives set out in the updated Title VI, the Justice and Home Affairs Council adopted an action plan on 3 December 1998: the *Action Plan of the Council and the Commission on How Best to Implement the Provisions of the Treaty of Amsterdam on an Area of Freedom, Security and Justice*.⁸

In this action plan it was emphasised that, as far as the principles were concerned, the Member States – among themselves and between them and the European institutions – should apply the ‘principle of solidarity [...] in facing the transnational challenges presented by organised crime [...]’. When it comes to actually achieving priorities, a distinction is made between priorities that have to be realised within two years and those that cover a longer time-scale of five years. The former entails greater involvement by Europol in cross-border criminal investigations in the Member States, the establishment of a common legal framework within which such investigations can take place, the strengthening of the European Judicial Network and the conclusion of talks on a Convention on Mutual Assistance in Criminal Matters. The latter set of priorities relates to such aspects as expanding the system of liaison officers in the fight against organised crime, stepping up efforts to combat money laundering and ensuring the approximation of criminal laws in specific areas with a view to promoting cooperation.

The 1998 action plan was given a boost in October 1999 with the programme that was adopted by the European Council at a special meeting in Tampere, Finland.⁹ ‘A Unionwide Fight against Crime’, primarily organised crime, featured prominently in the conclusions of this summit: ‘The European Council is deeply committed to reinforcing the fight against serious organised and transnational crime’. The following measures were among those taken to intensify this fight:

- the formation of joint investigation teams;
- the creation of a European Police Chiefs Operational Task Force ‘to exchange, in cooperation with Europol, experience, best practices and information on current trends in cross-border crime and contribute to the planning of operative actions’;
- the establishment of Eurojust with the task of ‘facilitating the proper coordination of national prosecuting authorities and of supporting criminal investigations in organised crime cases’; and

⁸ *Official Journal C* 19/1- 19/15, 23 January 1999.

⁹ See the *Presidency Conclusions, Tampere European Council, 15 and 16 October 1999*: <<http://ue.eu.int/newsroom>>.

- an intensification of efforts to combat money laundering ('Money laundering is at the very heart of organised crime. It should be rooted out wherever it occurs') through more rigorous implementation of the existing international instruments and closer cooperation between the Financial Intelligence Units.¹⁰

In order to monitor the implementation of the 1998 plan and the 1999 programme, the European Commission set up a *Scoreboard* indicating the current situation at six-month intervals. It would of course lead us too far afield to track the course of events on the *Scoreboard* in this introduction. If we look at the current situation indicated in the update of the *Scoreboard* on 30 December 2003, however, we can see that – with regard to measures specifically taken to ensure that organised crime and other forms of serious crime can be combated more effectively – a great many initiatives were introduced to implement the agreements reached.¹¹ For instance, Eurojust and the Police Chiefs Operational Task Force were set up, the talks on the Convention on Mutual Assistance in Criminal Matters were completed in 2000 and a framework was developed for the creation of joint investigation teams.

It therefore comes as no surprise that in its June 2004 assessment of the Tampere programme the European Commission made fairly positive comments about what had been achieved in the past few years: 'substantial progress has been made in most areas of justice and home affairs'.¹² However, the Commission followed this positive assessment with a whole list of points that, in its view, should be specified in more detail in a new programme ('Future of Justice and Home Affairs'). These points include developing a framework for the exchange of information between the Member States, strengthening the trust between the judicial authorities in the Member States, continuing the operational expansion of Europol and Eurojust while at the same time establishing a European Public Prosecutor's Office and tightening up the policy on terrorism, trafficking in human beings and drug trafficking. This programme is due to be formulated in the autumn of 2004.

¹⁰ See, for example, Milke (2003) on the subject of Eurojust.

¹¹ Commission of the European Communities, *Biannual Update of the Scoreboard to Review Progress on the Creation of an Area of 'Freedom, Security and Justice' in the European Union (Second Half of 2003)*, COM (2003) 812 final, Brussels, 30 December 2003.

¹² Commission of the European Communities, *Area of Freedom, Security and Justice: Assessment of the Tampere Programme and Future Orientations*, COM (2004) 4002 final, Brussels, 2 June 2004.

Attention must be also paid to the draft version of the *Constitution for Europe*, as adopted on 18 June 2004 at the Intergovernmental Conference.¹³ It is notable that the objective of the European Union, as formulated in Article 29 of the Treaty on European Union, is broadly incorporated into the general provisions of Chapter IV of Title III ('Internal Policies and Action'), but that the term 'organised crime' is no longer used (Article III-158, par. 3): 'The Union shall endeavour to ensure a high level of security by measures to prevent and combat crime, racism and xenophobia, and measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as by the mutual recognition of judgments in criminal matters and, if necessary, the approximation of criminal laws'.

One can well imagine that once the pillar structure of the European Union has been largely abandoned and maintaining domestic security becomes a joint task of the European Union and the Member States together, the distinction between 'crime' and 'organised crime' will no longer be so important. However, it is not very consistent to then use the latter term in subsequent articles, and sometimes incomprehensibly, for example in Article III-172, par. 1, which deals with the harmonisation of criminal provisions in particular areas: 'These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime'. Are the various types of crime listed not forms of organised crime?

Whatever the answer to this question may be, perhaps it is more important to point out that this treaty – if it were to be adopted – can also bring about significant changes in the field of cooperation in criminal matters. Not only because it resolutely sets its sights on approximation of the criminal laws of the Member States and their mutual recognition of judgments, but also because it aims to give a directing role to Eurojust and the European Judicial Network in tackling important criminal matters in the European Union (Article III-174), it proceeds on the assumption that a European Public Prosecutor's Office will be set up (Article III-175) and it wants to develop Europol into an effective linking pin between the various police forces involved in cross-border criminal investigations. The latter goals, however, should be reached without giving Europol executive powers: 'The application of coercive measures shall be the exclusive responsibility of the competent national authorities' (Article III-177; on the matter, see Garcia-Jourdan, 2003; see also Bigo, 1996 on the subject of police cooperation in Europe).

¹³ Conference of the Representatives of the Governments of the Member States, *Provisional Consolidated Version of the Draft Treaty Establishing a Constitution for Europe*, CIG 86/04, Brussels, 25 June 2004.

2. The General Policy of the European Union on Organised Crime

Let there be no mistake about it, it is clear from the above that the policy conducted within the context of the 'area of freedom, security and justice' in the fight against crime, organised or otherwise, mainly relates to the institutionalisation of cooperation in criminal matters in the European Union and, taking this one step further, to the creation of legal frameworks within which the Member States can readily and effectively ensure direct mutual cooperation in criminal matters in many different ways. This also reveals the one-sidedness and limited nature of the general policy straightaway. However necessary it may be to properly organise cooperation in criminal matters in order to combat various forms and cases of cross-border organised crime in the European Union, an improved judicial cooperation is certainly not sufficient to control this type of crime effectively.

In the 1980s this fact was not immediately recognised in the European Community or in the discussions between the Member States, which in the late 1970s began to exchange information on terrorism and, later on, on organised crime in the so-called TREVI working groups (the body was named after the fountain upon which the first meeting looked out upon). The idea that organised crime could only be combated through criminal law was still going strong. This emerges clearly from the 1990 Schengen Application Convention. The fight against organised crime, particularly drug trafficking and arms trafficking, was an important factor when drawing up this Convention. The main tools envisaged to actually wage this battle – apart from the exchange of information – were, however, of a penal nature: controlled delivery and cross-border surveillance.

In all fairness, it must be said that the Council Directive of 10 June 1991 on prevention of the use of the financial system for the purposes of money laundering was also clearly intended to preventively combat organised crime more effectively ('Whereas money laundering has an evident influence on the rise of organised crime in general and drug trafficking in particular [...]'). In that sense this directive appeared to realise that combating this type of crime by penal means certainly has its limits. This realisation was only partial, though. In the preamble of the directive it is, in fact, stated: 'Whereas money laundering must be combated mainly by penal means [...] – and this actually means: the prevention of organised crime can only play a supplementary role in its repression.'¹⁴

The murder of the Italian judges Giovanni Falcone and Paolo Borsellino prompted the Ministers of Justice and Interior to establish an Ad Hoc Working

¹⁴ 'Council Directive 91/308/EEC of 10 June 1991 on Prevention of the Use of the Financial System for the Purpose of Money Laundering', *Official Journal*, L166/77-166/83, 28 June 1991. For the important role played by the Council of Europe in developing the money laundering policy, see Gilmore (1999).

Group on International Organised Crime on 18 September 1992 and to assign it the task of investigating ways of intensifying the joint efforts of the Member States against organised crime. The working group compiled two reports in 1993 on the results of its work.¹⁵ These reports portrayed organised crime as a body of internationally operating hierarchically structured criminal organisations that try to gain a foothold in both illegal and legal markets in all manner of ways – through their own financial resources and the advice of highly qualified experts, through corruption and violence, etc. In light of subsequent academic research, a lot can be said against this representation of the problem (see the introductions to Parts I and II and the country reports in Part II), but given the then dominant understanding of organised crime, the obvious course was to seek penal means to combat it, by strengthening judicial and police cooperation between the Member States.

Other means were by no means ruled out, however. The first report pointed to the importance of cooperation between customs authorities and a few lines were also devoted to the preventive approach to organised crime; more particularly, the report referred to the importance of combating corruption in the public sector. In the second report, the working group first put forward proposals to start systematically collecting information on organised crime in the European Union; the subsequent Europol reports stemmed from this recommendation (these were discussed in the introduction to Part II). Secondly, the report proposed improving legislation in the Member States in a number of areas, for example with respect to criminalising legal entities, using phone tapping and confiscating the proceeds of organised crime. Thirdly, the report recommended the use of ‘administrative measures likely to hinder the development of international organised crime’, such as preventive measures to combat money laundering, tighter independent surveillance of businesses and more cross-border cooperation between administrative authorities.

In the years that followed, none of these recommendations were translated in a coherent manner into a programme to combat organised crime in the European Union. It took another murder: the assassination of the Irish journalist Veronica Guerin in Dublin in November 1996 for her repeated attacks in print on organised crime in the Irish capital (Mooney, 2001). The fact that this murder was committed while Ireland held the Presidency of the European Union was an important factor in the decision taken at the Dublin Summit on 13 and 14 December 1996 to set up a High Level Group of Officials, who were to draw up a ‘comprehensive action plan’ before April 1997 for combating organised crime.

The report of this working group was adopted by the Council on 28 April 1997 and it was published in the *Official Journal of the European Communities*

¹⁵ These reports were not published. The first report was presented to the ministers in May 1993, the second at the end of October 1993.

(hereinafter *Official Journal*) on 15 August 1997.¹⁶ Broadly speaking, this comprehensive plan consisted of a raft of measures to forcefully promote cooperation between the Member States in criminal matters, as intended in the Treaty on European Union: expansion of the system of legal assistance, greater involvement of Europol in cooperation between the Member States, mutual evaluation of the legal and organisational measures that the Member States implement in this area in their own country, etc. The plan also included a few proposals to devote more attention to preventing organised crime: transparency in public administration, screening of individuals and companies in public tender procedures, and social and economic measures for cities to prevent them becoming 'breeding grounds for organised crime'.

Following from this preventive section of the plan, the Council adopted a resolution on 21 December 1998 'on the prevention of organised crime with reference to the establishment of a comprehensive strategy for combating it'.¹⁷ This called for greater involvement on the part of civil society, interest groups and the business community in efforts to prevent organised crime, the evaluation of preventive measures that are implemented all over Europe in this context and the exchange of the findings of these evaluations. In particular, this resolution showed that over the years the prevention of organised crime had come to carry weight in the policy of the European Union.¹⁸

In the conclusion of the 1998 resolution, the European Commission and Europol were called on to prepare a report by the end of 2000 containing further proposals for preventing organised crime in the future. The ratification of the Amsterdam Treaty brought extra pressure to produce the report. It was published in May 2000 in the *Official Journal: The Prevention and Control of Organised Crime. A European Union Strategy for the Beginning of the New Millennium*.¹⁹ The strategy set down in this policy document is embodied in 39 recommendations, which build on the measures and initiatives that had been announced in all previously mentioned plans, both in the action plan to combat organised crime and in the Tampere programme.

¹⁶ 'Action Plan to Combat Organised Crime', *Official Journal* C 251/1-251/18, 15 August 1997.

¹⁷ 'Council Resolution on the Prevention of Organised Crime with Reference to the Establishment of a Comprehensive Strategy for Combating it', *Official Journal* C408/1-408/4, 29 December 1998.

¹⁸ In this connection see also the *Dublin Declaration* ('Tackling Organised Crime in Partnership'), which was adopted in Dublin at a symposium on cooperation between the public and private sectors in the fight against organised crime (Council of the European Union, CRIMORG 96, Brussels, 19 December 2003).

¹⁹ *Official Journal* C124/1-124/33, 3 May 2000.

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To a large extent, therefore, they contain little that is new. The proposals have simply been worked out in more detail in a number of areas. Examples include the following recommendations:

- to improve the annual reports on organised crime in the European Union
- to make it possible to exclude individuals and businesses from tender procedures
- to intensify cooperation between the Member States in investigations of organised crime by improving the exchange of information
- to strengthen the position of Europol
- to disseminate experience of special methods of investigation
- to introduce a witness protection programme, etc.

To a certain extent, one new element is the emphasis placed on strengthening cooperation with countries outside the European Union, particularly countries that wish to join the European Union, and with other international institutions such as the Council of Europe and the United Nations. The recommendations made in this context naturally betray the growing importance of the fight against organised crime in the foreign policy of the European Union.

In June 2003 a report was submitted to both the Council and the European Parliament, which examined each recommendation in turn to ascertain which measures had been implemented or which steps had been taken with a view to implementing the aforementioned strategy of the European Union.²⁰ The results show that most of the recommendations were implemented to a greater or lesser extent at European Union level. The authors of the report think there is still a lot to be done in some areas, however, for example in relation to the analysis of organised crime in the European Union, the screening of individuals and companies in tender procedures, the connection between organised crime and terrorism (particularly as regards financing terrorism), the use of investigative powers and investigative techniques in cross-border criminal investigations, and the protection of witnesses.

Clearly, if the European Union wants to make progress in these areas, it will be necessary to carry out comparative law studies on national statutory regulations relating to the criminal and administrative fight against organised crime within and between the Member States, as well as empirical research into the actual effect of these regulations and of the bodies that are involved in their implementation. The fact that some progress has already been made in both kinds of research in the past few years is a welcome sign. With regard to the legal measures that European

²⁰ Council of the European Union, CRIMORG 49, Brussels, 30 June 2003.

states have generally taken to combat organised crime more effectively, we refer to the studies published in 2001 by Walter Gropp and Barbara Huber. Peter Tak (2000) has made a valuable initial contribution to the study of special methods of investigation with the publication of a collection of studies on this subject in the various Member States of the European Union. In 2002 Monica Den Boer worked with colleagues in an attempt to identify which organisational changes the fight against organised crime had entailed for the police forces and the public prosecution services in the Member States.²¹

All in all, these studies show that in most of the Member States organised crime has a considerable influence on how criminal proceedings are regulated and on how criminal procedure is organised. In most of the Member States special methods of investigation – in some form or another – have become established and criminal procedure has undergone a process of centralisation and specialisation to a certain extent.

Finally, a kind of quest is currently under way within the European Union to update the strategic policy on combating organised crime. The symposium that was organised by the incoming Dutch Presidency of the European Union on 10 and 11 June 2004 in The Hague on the development of a new strategic concept is part of this effort. Among the issues discussed at that meeting were establishing the key priorities of the policy of the European Union, ways of increasing insight into organised crime, improving the actual use of existing instruments within the European Union and new approaches in the fight against organised crime.²²

3. The Growing Relevance of the Fight against Organised Crime in Foreign Policy

At the special summit in Tampere in 1999 it was decided that foreign policy must also be brought in line to bring about the ‘area of freedom, security and justice’: ‘Clear priorities, policy objectives and measures for the Union’s external action in Justice and Home Affairs should be defined’. In particular, the European Council declared its support ‘for regional cooperation against organised crime involving Member States and third countries bordering on the Union. In this context it notes with satisfaction the concrete and practical results obtained by the surrounding countries in the Baltic Sea Region. The European Council attaches particular importance to regional cooperation and development in the Balkan Region’.

²¹ In this connection, see also the study by Aden (1998), which establishes a link between the developments in the European Union and some Member States.

²² For an unpublished report of this meeting, see Council of the European Union, CRIMORG 65, Brussels, 19 July 2004.

Such an explicit expression of support might make us overlook the fact that the European Council had already issued a declaration at the Berlin Summit in September 1994 about the need for more cooperation between the Member States of the European Union and the states in northern, central and eastern Europe in the fight against organised crime.²³ This declaration pointed to the need to intensify operational cooperation, exchange liaison officers, ratify European conventions on mutual assistance and implement special cross-border investigation methods. This led in 1998 to the *Pre-Accession Pact on Organised Crime between the Member States of the European Union and the Applicant Countries of Central and Eastern Europe and Cyprus*,²⁴ which urged more detailed analysis of organised crime in Europe and more intensive organisation of police and judicial cooperation, practical assistance for future Member States and the exchange of liaison officers.

Following from the OCTOPUS project, which started as a joint programme of the European Commission and the Council of Europe in 1996 to help Central European countries organise their efforts to combat organised crime and corruption, assistance to former communist European countries was given through several specific programmes. Initially it was primarily the OCTOPUS project, but other more specific programmes followed, such as the MOLI project that was started in 2003 to help combat money laundering in Russia and the Ukraine, and the CARDS project that was launched on 1 March 2004 with the aim of strengthening police and judicial capacities in south-western Europe against organised crime.²⁵ This help comes in a variety of guises: practical training of police officers and judges, technical assistance in criminal matters, creation of specialised police units, exchange of police officers and initiatives to strengthen the role of Europol and Eurojust.²⁶ Other projects such as GRECO are also under way, which have already been discussed in the introduction to Part II.

One final point that should not be ignored is that since the Tampere Summit every Presidency of the European Union, together with its predecessor and successor, has formulated a JHA (Justice and Home Affairs) External Relations Multi-Presidency Programme. These programmes always give some consideration to the problems of organised crime and efforts to combat it. For example, the programme that was drawn up in January 2004 under the Irish Presidency devoted special attention to the

²³ *Berlin Declaration on Increased Cooperation in Combatting Drug Crime and Organised Crime*, Berlin, Pres/94/182, 8 September 1994.

²⁴ *Official Journal* C220/1-220/5, 15 July 1998.

²⁵ All these projects are described on the website of the Council of Europe: <http://www.coe.int/T/E/Legal_affairs/Legal_co-operation>.

²⁶ See the policy document *EU Action against Organised Crime in the Western Balkans*, Council of the European Union, CRIMORG 88, Brussels, 8 January 2004.

fight against organised crime in south-eastern Europe, police and judicial cooperation with Russia and discussions with the Ukraine on the aforementioned subjects. The fight against organised crime also features on the agenda with the United States and Canada, however, since late 2001 right up there with the campaign against terrorism. The same goes for the agenda with South American and Asian countries.²⁷

This important development – the interweaving of the domestic and foreign policies of the European Union, particularly in the field of combating organised crime – was put into effect in the European Security Strategy, which was adopted on 12 December 2003 in Brussels.²⁸ In this important document, organised crime is considered to be one of the key threats to Europe, alongside terrorism and regional conflicts:

Europe is a prime target for organised crime. This internal threat to our security has an important external dimension: cross-border trafficking in drugs, women, illegal immigrants and weapons accounts for a large part of the activities of criminal gangs. It can have links with terrorism. Such criminal activities are often associated with weak or failing states. Revenues from drugs have fuelled the weakening of state structures in several drug-producing countries. Revenues from trade in gemstones, timber and small arms, fuel conflict in other parts of the world. All these activities undermine both the rule of law and social order itself. In extreme cases, organised crime can come to dominate the state.

Clearly, this definition of the problem is of a much more serious nature than the one held by the Ad Hoc Working Group on International Organised Crime in the early 1990s. Organised crime may have been regarded as a serious issue at that time, but not as a problem that posed a direct threat to the security of the European Union. As a result of this negative assessment, the fight against organised crime has become an important part of the security strategy set out in the European Security Strategy. It has secured a place within the framework of the strategic objectives, with the result that in Europe too – as in the United States – crime control and foreign policies are inspired by the conviction that ‘the first line of defence will often be abroad’ and that ‘conflict prevention and threat prevention cannot start too early’. The result is that the fight against organised crime has become an integral part of the policy that must be conducted in order to achieve these and other objectives.

²⁷ Council of the European Union, JAI 1, Brussels, 7 January 2004.

²⁸ This document can be found on the website of the European Union: <<http://www.eu.int>>. It is worth mentioning that attempts have also been made in the past to consider the foreign dimension in the issue of organised crime. See, in particular, Rupprecht, Hellenthal et al. (1992).

The specific measures proposed include a more active approach to issues such as organised crime abroad, a more appropriate approach to such issues based on thorough threat assessments and also a more consistent approach: 'Better coordination between external action and Justice and Home Affairs policies is crucial in the fight against both terrorism and organised crime'. With basic principles like these, the fight against organised crime by the European Union has clearly entered another phase. From being an internal European matter for the Member States, it has become a global priority of the European Union.

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