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Policing international organized crime in the European Union

CYRILLE FIJNAUT*

1. Introduction

For many years already police cooperation in the European Community/European Union has been a major political issue. One of the main reasons for this is the growing concern in the Community itself as well as in the Member States about the development of international organized crime and its (potential) impact on the economy and the political systems in Western Europe. Although there is cause for concern, one may, however, not shy away from trying to come to grips with the notion and reality of organized crime in this context and, in the wake of an effort to understand the organized crime problem, to deal with the way in which police cooperation in the European Union (EU) is being organized these days. This is so not only because of the fact that these two phenomena may indeed have a major influence on the administration of criminal justice and the public administration in general in many countries, but also in order to see whether the actual restructuring of police cooperation is an adequate response to the problem of organized crime in Western Europe.

2. The problem of organized crime

Up to this moment there is not a more or less official definition of organized crime in the EU. In official documents most of the time this concept is used without explaining or detailing its content, e.g. in the very important Council Directive of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering. Here it is simply stated a.o.: "Whereas money laundering has an evident influence on the rise of organized crime in general and drug trafficking in particular; whereas there is more and more awareness that combating money laundering is one of the most effective means of opposing this form of criminal activity, which constitutes a particular threat to Member States' Societies".[1] The first report (May 1993) of the Ad Hoc Working Group on International Organized Crime, established by the Ministers

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1. *See* the *Official Journal*, 28.6.91, L 166/77-83.

of Justice and the Interior at their meeting in Brussels on 18 September 1992, however, shows that this simple term covers a very complicated matter, otherwise it would not have been necessary to draw up a (not exhaustive!) list of 10 so-called distinguishing features that are particularly characteristic of international organized crime. Most of the named features are:

- systematic criminal operations across state boundaries in a number of areas which are particularly profitable;
- an objective to influence politics, mass media, economy, state and judicial authorities, if necessary by keeping control over a certain territory;
- considerable economic resources for the purchase of sophisticated equipment as well as legal and other expert services in areas such as particularly company law, finance, tax law and criminal law;
- a hierarchical and compartmentalized organizational structure designed to make it difficult to relate the lower echelons of the pyramid to the top ones;
- a dual organizational structure in which profits derived from criminal activity are placed in legitimate business (money laundering);
- extensive use of company structures set up to conceal the connection between the criminal activity of the organization and its "legitimate" business;
- strict internal discipline applied to individual members through a system of reward and punishment;
- a willingness to use violence and murder as required to protect the organization and its activities;
- use of economic resources to promote corruption in public administration and political parties with a view to obtaining special favours and protection.

In conjunction with this "definition" of international organized crime the Ad Hoc Working Group has discussed a lot of proposals to enhance and improve Member States' joint action against this form of crime, but in no way clarifies and concretizises this definition by applying it to criminal groupings who would meet these requirements – let alone that it presents an overview of such groupings in Western Europe: their number, their location, their strength and their power, their mutual links etc.

At the level of the EU notably some committees of the European Parliament have been working on the problem of international organized crime. Hereby first of all reference must be made to the report of the special Committee of Enquiry into the spread of organized crime linked to drugs trafficking in the Member States of the European Community, prepared by Mr. P. COONEY.[2] In this report it is acknowledged that it is difficult to define what international organized crime is: "Criminal organizations vary as much as commercial enterprises of the legitimate variety in their size and structure. They range

2. *See* European Parliament, *Session Documents*, 1992, PE 152.380/fin.

from the relatively modest family concern, hiring contract labour when additional demands are made upon them, to the large holding company which is more concerned with efficient management of its many subsidiaries". Notwithstanding this comprehensive description the committee concentrated on organized crime "as a series of complex criminal activities carried out on a large scale by organizations or other structured groups with financial profit and the acquisitions of power as the predominant motives", and in this way on "organized crime syndicates". As a consequence of this choice only some attention is paid to the mafia, the camorra, the 'ndrangheta, the yakuzas, the triads, Turkisch clans, Polish organizations and organized motorcycle gangs; and this unfortunately in a rather superficial way. Their analysis is not much more than a pocket catalogue of traditional forms of organized crime.

The same holds true for the recent report on criminal activities in Europe, written by H. SALISCH and F. SPERONI for the Committee on Civil Liberties and Internal Affairs.[3] Or even worse.... In this report no real effort is made to discuss the definition of international organized crime or to detail the organization, the activities and the spread of the named "traditional, hierarchically organized groups in organized crime". And as far as the "new criminal organizations" are concerned which "are being set up in increasing numbers in Eastern Europe", the quality of the report is not much better. It does not go beyound the nominal indication of Russian, Ukrainian, Yugoslavian etc. groupings.

Also in the report that R. BONTEMPI some months ago wrote for the same committee on the fight against international fraud one looks in vain for a somewhat in-depth analysis of the problem.[4] In the context of this contribution this lack really has to be deplored because of the fact that the the *rapporteur* clearly links not only international fraud but also Community fraud to international organized crime. He even states that it makes no sense anymore to make a sharp distinction between these two major forms of international crime: in the foregoing years they have become more and more intertwined. Also this sweeping statement, however, is in no way proven, but it is nevertheless interesting, because it reflects the change that has taken place in recent years with respect to the definition of Communiry fraud, still better known as EC-fraud.

Although P. DANKERT in his well-known report on the prevention and repression of EC-fraud in "Europe 1992" of 1989 already pointed out that criminal organizations like the mafia were involved in this fraud, he evidently did this to underline that EC-fraud is not a harmless problem but a serious political and economical question.[5] His thesis in any case was not that EC-

3. *See* European Parliament, *Session Documents*, 1994, PE 207.498/fin.
4. *See* European Parliament, *Session Documents*, 1993, PE 205.845/def.
5. *See* European Parliament, *Session Documents*, 1989-1990, PE 130.335/def.

fraud was predominantly perpetrated by such organizations. Gradually, however, – in any case at the level of the EU – EC-fraud is being identified with international organized crime. This development can easily be traced in the annual reports and work programmes of the European Commission and in particular the UCLAF, the coordination unit for the fight against fraud which has been established in 1988 in the secretariat-general of the European Commission. In the beginning these documents hardly refered to EC-fraud as a form of international organized crime. In recent years, on the contrary, they not only point to the growing internationalization of EC-fraud, but they, indeed, also increasingly characterize this fraud as a type of organized crime. In the work programme for 1994, e.g., it states that: "The growth of financial crime through groups organized along almost 'business' lines which are able to negotiate with one another demands that the fight against fraud be made a priority of the 'new European dimension' by deploying the full armoury of existing instruments, including the possibilities of cooperation under Title VI of the Union Treaty. Like organized crime, the fight against fraud has to extend beyond national boundaries so that it can provide coherent and coordinated action as part of an integrated Community-level approach". And some pages further: "This global approach (...) will make it possible to target action to counter the threats posed by large-scale financial fraud, with its links to organized crime".[6] So, it is not at all astonishing that in the considerations which form the basis of the recent proposals of the European Commission for a Council Regulation and a Council of the European Union Act (establishing a Convention) for the protection of the Communities' financial interests in no uncertain terms is stated: "Whereas cases of economic and financial fraud affecting Community revenue and expenditure are often not confined to a single country and are more and more commonly committed by organized crime; Whereas organized crime is likely to exploit the systems for collection and disbursement of Community funds with all the more impunity as national bodies of legislation provide for inadequate measures to penalize such fraud and diverge so widely as to hinder the effective protection of the Communities' financial interests".[7]

Naïve criminologists could claim that this choice of words yet is not that remarkable. Did not E. SUTHERLAND himself, in *White Collar Crime*, characterize the crimes of big American corporations as organized crime?[8] But this argument is much less convincing than it in theory and in reality is. Because – in contrast with E. SUTHERLAND – the European Commission makes use of

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6. European Commission, *Protecting the Financial Interests of the Community; The Commission's Anti-fraud Strategy; Work Programme for 1994* (Luxembourg 1994) pp. 5, 9.
7. Commission of the European Communities, COM (94) 214 final, Brussels, 15.6.1994, 94/0146 (CNS).
8. C. FIJNAUT, "De connecties tussen EG-fraude en georganiseerde misdaad", in H. DE DOELDER (ed.), *Bestrijding van EEG-fraude* (Arnhem 1990) pp. 87-96.

the term "organized crime" in its traditional sense, as a label for the mafia, the triads, the yakuzas etc. And although mafia families have already been involved in EC-fraud for many years, it simply does not hold true to state that this fraud is, in general, predominantly committed by the aforementioned criminal organizations.[9] This is, ironically, above all demonstrated by the cases which are presented in the annual reports. Most of the time they have no relationship at all with organized crime in the usual meaning of this term, but must be categorized as ordinary examples of international (economic) crime. For this reason it is not going too far to argue that the European Commission still manipulates the notion of organized crime to stress the importance of the underlying issue.

In my opinion, however, it is not at all necessary to mix up the problem of EC-fraud with the problem of organized crime in a vague way. With reference to the sharp-tongued political debate on EC-fraud within the framework of the debate on the constitutional outlook of the European Community/Union, the importance of EC-fraud is beyond dispute. The only thing one might object to is that the European Commission is, up to this moment, still not able to present an adequate analysis of this problem in the EU. Like in the case of "real" organized crime the most essential data on EC-fraud are lacking: its magnitude, its variety, its territorial centres of gravity, its economic impact etc. Of course, this conclusion leads us to the means available to the European Commission to assess the problem of EC-fraud and to contain this problem, also insofar as traditional organized crime groupings are involved. But before moving on it is important to underline that most of the Member States have themselves made no effort at all to analyze on a yearly basis the nature, the scale and the development of organized crime in their respective societies, including its involvement in EC-fraud. In the foregoing years only Germany, Italy, the Netherlands and the United Kingdom have tried to assess the status of this problem within their own borders.[10] In other words: the great lack of information and insight that exists at the level of the EU is not compensated for by an abundance of these essentials at the level of the Member States.

The conclusion that has to be drawn from all this is that, insofar as the restructuring of police cooperation in the EU is based on the growing problem of organized crime, the foundation of this argument is a rather weak one. Of

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9. With respect to the involvement of the mafia in EC-fraud *see* e.g. F. LETTERI, "Erfahrungsbericht aus den Mitgliedstaaten des romanischen Rechtskreises unter Berücksichtigung der organisierten Kriminalität", in G. DANNECKER (ed.), *Die Bekämpfung des Subventionsbetrugs im EG-Bereich* (Bonn 1993) pp. 87-103.
10. *See* in particular: Ministero Dell' Interno, *1993 Report on Organized Crime in Italy* (Rome 1994); National Criminal Intelligence Service, *An Outline Assessment of the Threat and Impact by Organized/Enterprise Crime upon United Kingdom Interests* (London 1993); Bundeskriminalamt, *Kurzdarstellung des Lagebildes Organisierte Kriminalität Bundesrepublik Deutschland 1993* (Wiesbaden 1994).

course, it would be nonsense to claim that such a problem does not exist. Not only the national reports referred to above, but also the day-to-day news sufficiently proves that times have changed and that different forms of organized crime are nowadays part and parcel of social life all over Europe. My point, however, is that the knowledge needed to assess whether the actual restructuring of police cooperation in the EU makes up an adequate response to this problem, is still lacking. But, as we will see, the problem of organized crime is not at all the only point of reference for its reorganization. A lot of other arguments play an important role in this context.

3. The restructuring of police cooperation

That the restructuring of police cooperation at the level of the EU is ultimately not determined by the problem of organized crime itself but by the problem of the constitutional design of the EU, can easily be demonstrated by the story of the foundation of Europol. This story, indeed, shows that the question has never been so much: "What might be the most adequate restructuring of police cooperation to contain the problem of organized crime"?, but "Within which (Communitarian or intergovernmental?) framework should its restructuring take place?"

3.1. Police cooperation in the Maastricht Treaty

Already since the 1960's in Germany politicians and police officers have put forward the idea that it was necessary to build up an institution in the European Community to further police cooperation between its Member States. In the Schengen Agreement of 1985 this idea was only realized in a very limited but nevertheless important manner: in one of the annexes (3) it states that, with a view to the exchange of information on the drugstrade a central police institution will be indicated. At the European Summit in Luxembourg (June 1991) Germany took the initiative to include the idea of Europol openly and vigorously in the Treaty on European Political Union. The other Member States agreed upon this proposal, albeit somewhat hesitantly. Anyhow, in the annexes of the Summit's conclusions it says: no later than 31 December 1993 the commitment will be inserted into the Treaty to establish a Central European Investigation Bureau (Europol) with respect to the fight against the international drugs trade and organized crime; the details of this undertaking will be settled by common consent of the European Council; the tasks of this Bureau will be developed step-by-step: in the first phase a Bureau will be founded for the exchange of information and experience (up to 31 December 1992); thereafter, in the second phase, executive powers will be assigned, also

within the Member States; the Commission as well as the individual Member States have the right to submit proposals.[11]

It is clear from the text of the Maastricht Treaty that the other Member States were only willing to take the first step. In Chapter VI, Article K.1.9. a provision was inserted that they (also) consider as a question of common interest: "police cooperation for the purposes of preventing and combatting terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs co-operation, in connection with the organization of a Union-wide system for exchanging information within a European Police Office (Europol)"; in other words: in this provision there is no question of the second step: the assignment of executive powers to Europol. Furthermore it continues – taking into account the nature of Chapter VI – that only the Member States have a right of initiative with respect to the further development of this specific form of cooperation (Article K. 3). Nevertheless, on the basis of Article K. 4 the European Commission must be fully involved in the Europol initiative and on the basis of Article K. 6 the European Parliament has to be regularly informed of this initiative, may give advice on its most important aspects and can ask questions and make recommendations to the European Council. Thus, to some extent the institutional status of Europol is a mixed one: it is predominantly an intergovernmental institution, indirectly it is a communitarian one.

However, one should not only look at the provisions in Article K of the Maastricht Treaty. There is also the annexed Declaration on Police Cooperation. With reference to this Declaration usually only the following topics are indicated as potential areas of future police cooperation: support for national criminal investigation and security authorities, creation of data bases, central analysis and assessment of information, collection and analysis of national prevention programmes and measures relating to further training, research, forensic matters and criminal records departments. But it is important to underline that the Declaration starts by saying that the Council confirms the agreement between the Member States on the objectives which lie at the root of the proposals of the German delegation during its Summit in Luxembourg. That is to say that the Member States still distance themselves from the complete proposals (– they only accept the objective... –) but nevertheless keep open the possibility that Europol will one day get executive powers to fulfil is mission.

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11. This part of the history has been described in C. FIJNAUT, "The 'Communitization' of Police Cooperation in Western Europe", in H.G. SCHERMERS, C. FLINTERMAN, A.E. KELLERMAN a.o., *Free Movement of Persons in Europe; Legal Problems and Experiences* (Dordrecht-Boston 1993) pp. 75-92. *See* also C. FIJNAUT, "The Schengen Treaties and European Police Co-operation", 1 *European Journal of Crime, Criminal Law and Criminal Justice* (1993) pp. 37-56.

3.2. The Ministerial Agreement on Europol

Already at the Summit of Maastricht in December 1991 the European Council asked the TREVI-Ministers to take, in cooperation with the European Commission, the measures necessary for the quick establishment of Europol. It wasn't until September 1992 that a project group, located in Strasbourg, began to prepare its actual start in a limited form: in the form of a Europol Drugs Unit (EDU). Two questions, however, also slowed down the rapid start of this Unit. On the one hand the question of the location of Europol in (one of) the Member States, being of course part and parcel of the general question of the location of EU institutions. On the other hand the issue of whether Europol could start its activities without a Convention being concluded. On June 2, 1993, in Copenhagen the TREVI-Ministers nevertheless took the decision that the EDU – "considering the urgent problems posed by international illicit drug trafficking, associated money laundering and organized crime" – could already be established on the basis of the Ministerial Agreement that they had just signed, as soon as the European Council had resolved the question of the temporary or permanent site of Europol/Europol Drugs Unit. This question was resolved at the meeting of the European Council in Brussels on October 29, 1993: The Hague would become the domicile of Europol. At the Summit of Brussels on December 10-11, 1993, the only thing that was added was that the Ministerial Agreement should be replaced by a Convention before October 1994.

With a view to the way police cooperation has been portrayed in the Maastricht Treaty, it is important to present the said Ministerial Agreement in some detail.

The definition of the nature and task of the EDU is completely in line with the provision in the Maastricht Treaty: "The Unit is to act as a non-operational team for the exchange and analysis of intelligence in relation to illicit drug trafficking, the criminal organizations involved and associated money laundering activities affecting two or more Member States. The objective of the Unit will be to aid effective action by the police and other law enforcement agencies within and between Member States, against the above mentioned criminal activities". This mission statement is followed by an instruction concerning the performance of the related duties that clearly shows that the actual functioning of the Union is for the time being, completely dominated by the laws of the Member States: the participants have to act "in accordance with the provisions of their national laws and any instructions given by or on behalf of their competent Ministers". This instruction is notably detailed with regard to the treatment of information and data protection. As far as the first issue is concerned, the Agreement states that "the liaison officers will, within the limits of national legislation, legal rules and any instructions given by or on behalf of their competent Ministers, communicate information in further-

ance of specific criminal investigations of drug-related offences, the development of intelligence as well as strategic analysis". In relation to the protection of data a similar statement is made: "Personal information will be communicated on the basis of exchanges between the liaison officers, each of them acting in accordance with the provisions of national laws, and also any relevant legal rules and Ministerial instructions, concerning the processing of personal information, and respecting any conditions expressed by the delivering state in respect of the use of such information".

In conjunction with the foregoing it is equally important to note that not only is the actual functioning of the Unit completely based on the national laws of the Member States, but that also the governance of this Unit is to a large extent dependent on national authorities. On the one hand the Agreement states that the national liaison officers remain under the control of the individual Ministers who also pay the costs for their maintenance and equipment. On the other hand these Ministers have to invite their national data protection authorities to supervise the activities of their liaison officers in respect of national legislation on the protection of personal data, and they must instruct those officers to cooperate fully with the named authorities. All the Ministers in question, however, will exert a general oversight on the activities of the Unit. The coordinator of the Unit and his 2 Assistant Coordinators are responsible for its day-to-day operation. Particularly in this context it is remarkable that no role at all is attributed to the European Commission, although the Maastricht Treaty says that it has to be fully involved in initiatives like the setting-up of Europol. It would of course be premature to draw firm conclusions from this fact in relation to the content of the Europol Convention on this point, but it nevertheless shows, in my opinion, the large extent to which the Member States consider the foundation of Europol as a intergovernmental affair and not as a communitarian question.

Further on one may not lose sight of the embedding of the Unit in the (inter-)national police structures. Within this context it is first of all important to underline that in accordance with the Agreement requests for information to the Unit and its responses are to be channelled through one or a limited number of national central authorities, *i.e.* the Unit is clearly conceived as an inter-agency institution and not as an institution that (also) can communicate directly with police officers in the field. This conception is of course completely in line with the definition of the nature of the Unit: "a non-operational team", but at the same time it again makes clear that the assignment of executive powers really is a long term project. Secondly it should be stressed that in the Agreement it is stated that "the transmission of personal information to non-Member States or to international organizations by the liaison officers will not take place". This provision evidently reflects perfectly the notions which make up the basis of Europol-EDU: it is an intergovernmental affair of the Member States of the EPU that may not prejudice their sovereignty outside of

this specific form of cooperation. In addition it gives off, however, the signal that Europol can in no way be interwoven with Interpol and shall be developed in the EPU parallel to and eventually at the expense of this organization.

Finally, some attention may be given to the remarks on Europol in the report written by the Ad Hoc Working Group on International Organized Crime that was established by the TREVI-Ministers in September 1992. In its first report of May 1993 this Group suggested to these Ministers that they "confirm the importance of hastening the drawing up of the Europol Convention proper and express their intention of taking decisions on the issue of extending the tasks of Europol to include assistance in combatting types of cross-border crime other than drug trafficking". Such decisions could of course be taken on the basis of the Maastricht Treaty. But although the Ministers in question discussed other forms of international (organized) crime in Denmark, they were clearly not yet willing to follow the suggestion of the Ad Hoc Group. In the relevant press release of June 2, 1993, they limit themselves to a summing up of the main issues contained in the Ministerial Agreement: Europol is an "umbrella organization" for the national drug information units, etc. Neither the conclusions of the Copenhagen Summit in June 1993 nor the conclusions of the Brussels Summit in December 1993 mention this proposal.

4. Some comments on the gap between rhetoric and reality

It may be clear from the foregoing that there is a big gap between the somewhat rhetorical political debate in the EU on organized crime and the reality of the restructuring of police cooperation. In particular attention has to be paid to the three following questions.

The first question is that, up to this moment in any case, all sorts of international organized crime falls outside the (limited) competence of Europol. This means of course that in the short term Europol principally cannot become the adequate police cooperation mechanism the European Parliament and notably Germany have strived for. In many areas of international organized crime it is not allowed to fulfil its mandate. Evidently it remains to be seen whether in the near future the European Council will stick to its original viewpoint with respect to the task of Europol. Not only in the European Parliament but also in the parliaments of many Member States more and more voices are saying that a great effort has to be made at an international level in order to contain all sorts of organized crime. One many think of the illegal trade in nuclear materials, the trade in women and men in general, and large-scale theft of cars and trucks. This may easily lead to the quick enlargement of Europol's mandate. If so, one should take into account that such a development also entails a risky situation, notably that Europol will be overcharged and can not immediately meet all the expectations political institutions and police services

have. In other words, one should not ask too much from Europol at once, but tune the expectations and tasks to the (organizational, technical and, last but not least, personal) means this important newcomer on the European police market disposes of. In the long run Europol will be better off if its growth would take place in a gradual and balanced way.

The second question that still remains – also if the remit of Europol is widened, e.g. on the occasion of the signing of the Europol Convention – is whether it has been wise to establish Europol within the intergovernmental framework of the EU and not in its communitarian framework. Of course, in the short and medium term this is a purely academic question, but in the long run it may nevertheless be an important question. Notably two officials of the German Ministry of Home Affairs have put forward a lot of arguments in support of the thesis that Europol should be established on a communitarian, supranational basis and, in addition, should get some executive powers.[12] Some of their arguments are:

- the actual cooperation between the Member States is not organized in a coherent, systematic way;
- this cooperation doesn't commit the Member States enough;
- not all the Member States are equally involved in the fight against (international) organized crime;
- the fight against such crime is rather complicated and should be centralized if it is to become successful;
- a lot of states don't invest enough energy in the implementation and enforcement of relevant international treaties;
- and "we" are in desperate need of EPU organs which could give coherence, continuity and rapidity to the actual cooperation arrangements.

Apart from the question of under which political conditions some restructuring of Europol into an executive supranational investigation bureau is possible, is the question under which conditions such a reform is necessary or at least desirable. The planners of the German Federal Ministry of Home Affairs argue that the problems of international organized crime and the internationalization of ordinary crime and the problems of international terrorism and violent radicalism, are such that the foundation of an executive Europol can no longer be postponed. This argument can of course be rejected on the grounds that at an international as well as a national level no analyses are at hand that really prove their case. On the other hand it can not be denied that the Member States of the EPU are nowadays confronted with crime problems (e.g. the penetration of Italian mafia groupings and the flourishing traffic in women)

12. R. RUPPRECHT and M. HELLENTHAL, "Programm für eine Europäische Gemeinschaft der Inneren Sicherheit", in R. RUPPRECHT, M. HELLENTHAL a.o., *Innere Sicherheit im Europäischen Binnenmarkt* (Güttersloh 1992) pp. 23-320.

they can scarcely handle by means of the actual forms of intergovernmental (police) cooperation. Not only because of the fact that, as RUPPRECHT and HELLENTHAL underline, the actual cooperation mechanisms are much too limited and informal, but also because the relevant States don't set the same priorities in the containment of crime problems and are not subject to any central pressure to harmonize their criminal policies. In this sense the strengthening of the supranational position of Europol and the gradual introduction of some executive powers for its officers would not be that unrealistic.

The third and last question that has to be raised concerns the fact that in particular with respect to the problem of EC-fraud police cooperation in the EU is being reorganized in a (communitarian!) way that is different from the way in which this cooperation via Europol is being restructured. This development is a rather troubling one, not only from a constitutional viewpoint, but also from an operational perspective. As far as the first point is concerned, one must be aware of the fact that legally the enforcement of EC-law is entrusted to the Member States (Art. 5 EEC-treaty); only in the field of competition policy does the European Commission dispose of real (repressive) policing powers.[13] Under the influence of all sorts of problems, however, the European Commission has gradually enlarged and changed its involvement in the containment of EC-fraud. It not only founded the UCLAF within its own secretariat-general (*see* herefore) in 1988 but is also more and more transforming this unit into a real criminal investigation department, as the last annual reports on the fight against EC-fraud show.[14] So one has to ask the question whether this development fits into the constitutional framework of the EU or not. The answer is probably: no. On the other hand one must not lose sight of the fact that EC-fraud is not an isolated criminal phenomenon, but a phenomenon that in some respects is closely linked to other crime problems, and in any case is to some extent committed by persons and groupings whose criminal activities already now fall within the domain of Europol, e.g. mafia families which are also in the drugs trade. From an operational perspective it would thus be much better if the coordination of the (repressive) fight against EC-fraud were to be integrated in the Europol-initiative. The European Commission should from this point of view concentrate its efforts on the prevention of this fraud, both at its own level as at the level of the Member States.

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13. *See* a.o D. DEBRUYNE, *De grenzen van de onderzoeksbevoegdheden van de Europese Commissie in mededingingszaken* (Antwerpen 1992); F. GILLMEISTER, *Ermittlungsrechte im deutschen und europäischen Kartellordnungswidrigkeitenverfahren* (Baden-Baden 1985); Ch. HARDING, *European Community Investigations and Sanctions* (Leicester 1993).
14. With respect to the policy concerning EC-fraud in general one should consult a.o. J. VERVAELE, *EEG-fraude en Europees economisch strafrecht* (Deventer 1991); Commission of the European Communities (ed.), *The Legal Protection of the Financial Interests of the Community: Progress and Prospects since the Brussels Seminar of 1989* (Dublin 1994); C. FIJNAUT, L. HUYBRECHTS en Ch. VAN DEN WYNGAERT (eds.), *EG-fraudebestrijding in de praktijk* (Antwerpen 1994).

Only when the Member States are willing to transform Europol into a supranational, communitarian institution the opposite solution will become a thinkable one: an amalgation of Europol and UCLAF. But such a solution is not for today or tomorrow...