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**Irish Presidency of the European Union
Informal meeting of the Justice and Home Affairs Ministers
Dublin, Ireland - 22/23 January 2004**

Action against Organised Crime

Introduction

The Treaties provide that a central objective of the Union will be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation. Preventing and combating organised crime is specifically mentioned for that purpose.

The European Council at Tampere recorded its commitment to reinforcing the fight against serious organised and transnational crime as well as its belief that a high level of safety in an area of freedom, security and justice presupposed an efficient and comprehensive approach in the fight against all forms of crime. The European Council in Tampere also called for the integration of crime prevention aspects into actions against crime as well as the further development of national crime prevention strategies.

The EU Strategy for the Beginning of the New Millennium on the Prevention and Control of Organised Crime of May 2000 and the mid-term review of that strategy of June 2003 represent the present framework for cooperation at EU level in the fight against organised crime. That framework is further reinforced by the process of mutual evaluation conducted under the remit of the Multi Disciplinary Group on Organised Crime.

The Irish Presidency will continue to prioritise the fight against organised crime and will give priority to the ongoing work programme in this area derived from the Strategy for the New Millennium and the evaluation reports. Publication of the Commission's Communication on the prevention of and the fight against organised crime in the financial sector is also anticipated during the Irish Presidency and discussion on it and other relevant initiatives will be taken forward.

Tackling Organised Crime in Partnership

Tackling Organised Crime in Partnership was the title given to a Conference hosted in Dublin on 20 and 21 November 2003 which brought together representatives of the public and private sectors from EU Member and Accession States and further afield. The Conference was co-financed under the European Commission's AGIS programme; developed through a partnership of the incoming Irish and Dutch Presidencies and supported by Europol and the Justice and Home Affairs Directorate General of the European Commission.

The aim of the Conference was to bring together representatives from the public and private sectors to examine the issue of how partnerships between those sectors could contribute to identifying, measuring and preventing harm from organised crime. The Conference discussed as a basis for effective and efficient partnership the need for compatible European intelligence systems, a coherent European information policy and the development of European crime statistics as a basis for comparable threat and economic risk assessments. The Conference resulted in the Dublin Declaration on Tackling Organised Crime in Partnership.

The Declaration is the result of submissions made during the preparatory stages of the Conference and contributions made by delegates during and subsequent to debates within the Conference. Its purpose is to assist the further development of European and international co-operation across the

private and public sectors and to strengthen measures, standards, best practices, and mechanisms to reduce and prevent harm from the activities of organised crime.

The Declaration contained ten recommendations as follows:

1. That leaders in the private and public sectors be invited to emphasise their commitment to the fight against Organised Crime by engaging in the formation of Partnerships between the public and private sectors at local, national, European and international levels.
2. That a Protocol on Partnerships between the public and private sectors at national level be developed alongside an Action Plan at EU level.
3. That EU Member States review their criminal intelligence systems and procedures with a view to rendering them mutually compatible with common minimum standards.
4. That as regards organised crime incidence, trends and threats, Member States bring their national collection, reporting and planning cycle in line with the European process as organised by Europol.
5. That the effective collection, storage, analysis and exchange of data must be consistently promoted at EU level under the umbrella of a comprehensive EU law enforcement information policy.
6. That a comprehensive system of European crime statistics should be elaborated and a co-ordinated EU Crime Statistics Strategy be developed.
7. That national platforms involving the fullest possible range of stakeholders from the public and private sectors be established in each

country to enhance the co-ordination and development of crime prevention initiatives and raise public awareness of crime prevention.

8. That an EU Crime Prevention Research Advisory Panel be established, supported by similar arrangements in Member States to include, *inter alia*, academics, scientists, designers and other representatives from the private and public sectors.
9. That an EU Good Practice Guide on designing crime out of legislation, products and services be developed in conjunction with relevant manufacturers, consumer bodies and other stakeholders.
10. That a consultative process be launched on the establishment, membership and role of a Steering Group at EU level to deliberate and advise on the Action Plan for tackling organised crime in partnership.

These recommendations are in line with and complement those of the Millennium Strategy and the findings of the final report on the second round of mutual evaluations.

Possible Future Action

Against that background, the Irish Presidency sees value in seeking to take forward work on the concept of partnerships between the public and private sectors as a means of further reinforcing the fight against organised crime on the basis of the recommendations contained in the Dublin Declaration.

The Irish Presidency proposes, in particular, to bring forward for discussion a proposal to develop a model protocol for partnerships at a national level between the public sector, including law enforcement agencies, and the private sector arising from the recommendations of the Dublin Conference. It is intended that this protocol might identify the key elements required for establishing effective partnerships to enable private sector stakeholders, law

enforcement and government bodies to work together to minimise the harm caused by organised crime.

1. Ministers are invited to note the Dublin Declaration recommendations and consider whether a partnership based approach involving the public and private sectors can contribute to the fight against organised crime by playing a role in reducing the harm to society and economies from the activity of organised criminals in areas such as counterfeiting of goods, intellectual property theft, smuggling etc.

2. Ministers are also invited to consider whether, for the purpose of taking the concept forward at European Union level, there would also be merit in developing an Action Plan at EU level and in the establishment of a Steering Group for the purpose of advising on the content of such an Action Plan taking account of the recommendations contained in the Dublin Declaration.

Assets seizure

The issue of combating organised crime through attacking the assets of those who engage in criminal activity is also worthy of consideration. Ireland has achieved considerable success in combating the activities of organised crime groups in recent years through innovative proceeds of crime legislation and the work of the Criminal Assets Bureau. The significance of this legislation lies not only in the innovatory approach to the freezing and forfeiture of the proceeds of crime but also in the means employed to implement it.

The Proceeds of Crime Act, 1996 provides for a civil forfeiture procedure in relation to property which is the proceeds of crime. The Act enables the High Court to freeze and ultimately dispose of property which it is satisfied on the balance of probabilities - the civil burden of proof - is the proceeds of crime. What distinguishes the 1996 Act from other legislation allowing confiscation of assets is that an application to the Court can be made in respect of property independent of criminal proceedings and irrespective of whether the person holding the property has been convicted of an offence. The focus of this new procedure therefore becomes property which is the proceeds of crime and not the person. The Irish Supreme Court has held [Gilligan v Criminal Assets Bureau, 2001 4IR 113] that a criminal conviction is not a prerequisite for the making of a judicial order freezing the asset etc because the principle of the Act is not penal confiscation – on the contrary, since the asset has been found on the balance of probabilities to be the proceeds of crime, it is not the lawful property of the person in the first place.

Proceeds of crime for the purposes of the 1996 Act is defined to mean property obtained or received at any time by, or as a result of, or in connection with the commission of an offence. Applications under the Act are in practice made by the Chief Bureau Officer of the Criminal Assets Bureau, who is a senior police officer. Provision is made in the Act for a three stage procedure under which the High Court may make interim, interlocutory and disposal orders.

- Applications for an *interim order* are made ex-parte and the High Court is empowered to make such an order where satisfied that the property in question constitutes directly or indirectly the proceeds of crime and exceeds a specified value [€13,000]. The effect of an interim order is to freeze property for a period of 21 days.
- An application for an *interlocutory order* may then be brought within that period with notice being given to the person in possession or control of the

property (the respondent). An interlocutory order has the effect of freezing property for up to a further seven years. On an application for an interlocutory order, the High Court will make the order, if satisfied on the balance of probabilities that the property concerned is, or represents, the proceeds of crime unless the respondent can show, again on the balance of probabilities, that it is not.

- The High Court is also empowered to make a *disposal order* in respect of the property where an interlocutory order has been in force for not less than seven years unless it is shown to its satisfaction that the property is not the proceeds of crime. The effect of a disposal order is to deprive the respondent of any rights in the property.

Another key feature of the procedure is the provision made for the burden of proof to shift to the respondent where the High Court is satisfied on evidence presented to it that property is the proceeds of crime. Thus, in an application for an interlocutory order, where the applicant satisfies the Court that the property is the proceeds of crime, the Court must grant the order, unless the respondent (the person who claims to be the owner) satisfies the Court that it is not. Similarly where an interlocutory order has been in force for a period of 7 years, the High Court must make a disposal order unless satisfied that the property is not the proceeds of crime. These provisions are subject to the further safeguard whereby the Court must not make an order if it is satisfied that there would be a serious risk of injustice.

The Criminal Assets Bureau was established by the Criminal Assets Bureau Act, 1996. It represents a key instrument for the purposes of implementation of the Proceeds of Crime Act, 1996 but its remit also goes beyond that. The intention behind the Act was to provide for a multi-agency approach so that individuals suspected of involvement in crime could be comprehensively investigated.

To that end the Bureau brings together in one agency the skills and powers of the Garda (police), the Revenue Commissioners (tax officials) and social welfare officers.

The 1996 Act defines the objective of the Bureau as being to

- identify the assets of persons which derive from or are suspected to derive, directly or indirectly, from criminal activity; taking appropriate action under the law to deprive or deny persons of those assets; and undertaking preparatory work in relation to any appropriate proceedings

and its functions as including taking all necessary actions for the purposes of

- the confiscation, restraint of use, freezing etc., of assets identified as deriving, or suspected to derive, directly or indirectly from criminal activity in accordance with Garda / police functions;
- ensuring that the proceeds of criminal activity or suspected criminal activity are subjected to tax and that tax legislation is fully applied in relation to such proceeds or activities; and
- investigating and determining claims under social welfare legislation in respect of persons engaged in criminal activity.

Bureau Officers are drawn from the relevant agencies - Garda, Revenue, Department of Social Welfare - but exercise the powers and duties relevant to that position for the purposes of the Act in the name of the Bureau and under the direction and control of the Chief Bureau Officer who is appointed by the Garda Commissioner. Provision is also made for the appointment of a Bureau Legal Officer and other professional and technical staff.

Ancillary provisions provide for the anonymity of Bureau officers in court proceedings, powers of arrest and search etc.

The Criminal Assets Bureau targets those engaged in drug trafficking and other forms of organised crime. Since its establishment in October 1996 until 31 December, 2002, the Criminal Assets Bureau has obtained final restraint orders on assets to the value of over €20m approximately (inclusive of €13.2m, Stg£2.3m, and US\$5.5m). In the same period, taxes and interest demanded were of the order of €69m approximately with over €46m collected. In addition, savings on social welfare payments amounted to over €1.4m. As a result, many organised crime groups have been disbanded or have had their activities significantly disrupted.

3. Ministers are invited to comment on whether they see scope for the application of the Criminal Assets Bureau model and/or a civil based proceeds of crime approach as a tool in the fight against organised crime.

Annex - Tackling Organised Crime in Partnership - Dublin Declaration.

12 January 2004

ANNEX

“TACKLING ORGANISED CRIME IN PARTNERSHIP”

THE DUBLIN DECLARATION

“Tackling Organised Crime in Partnership”, the first European Congress on developing partnerships between the public and private sectors to identify, measure and prevent harm from organised crime, was held in Dublin on 20th and 21st November 2003. It brought together more than 300 public and private sector representatives from European Union Member States and Acceding Countries. Delegates from South Africa, Israel, Romania, Croatia, Norway and the United States of America were also present. In addition to the public and private sectors, governmental organisations (Interpol, Europol, and the World Customs Organisation), non-governmental organisations, industry associations and academia were also represented.

The Congress was co-financed under the European Commission’s “AGIS” programme; developed through a partnership of the incoming (2004) Irish and Dutch Presidencies of the Council of the European Union; and supported by Europol and the Justice and Home Affairs Directorate General of the European Commission.

This Declaration is the result of submissions made during the preparatory stages of the Congress and contributions made by delegates during, and subsequent to, debates within the Congress. Its purpose is to assist the further development of European and international co-operation across the private and public sectors and to strengthen measures, standards, best practices, and mechanisms to reduce and prevent harm from the activities of organised crime.

The overriding objective of this groundbreaking Congress was to explore ways in which the potential harm from the activities of organised crime can be identified, measured and prevented. Innovative thinkers from the private and public sectors and academia gathered to debate and develop ways to tackle this global threat recognising that, if left unchecked, organised crime will increasingly cause serious harm, particularly social and economic harm, to governments and business sectors while also seriously damaging the quality of life of citizens. For example, the global economic impact of counterfeiting on legitimate companies in 2000 amounted to an estimated €450 billion and there is every indication of that this figure is still growing.

Congress accepted ‘Organised Crime’ as defined in the UN Convention on Transnational Organised Crime and the EU Joint Action 98/733/JHA of 21 December 1998 (which makes it a criminal offence to participate in a criminal organisation - see Justice and Home Affairs/organised crime pages of the europa website

www.europa.eu.int). In addition Congress took the view that corruption, which is frequently a tool of organised crime, also merits consideration within the issues discussed.

The private and public sectors share a common interest in jointly developing ways to identify and prevent the incidence of harm from the activities of organised crime. The Congress therefore addressed the challenge of how this common interest could be harnessed through establishing mechanisms and structures to facilitate a partnership approach to lessen the impact of organised crime on private and public stakeholders drawing, where appropriate, on the relevant experience of existing partnerships. It was noted that for this purpose the private sector should encompass not only the business community but should extend to other stakeholders representing civil society including non-governmental organisations and universities.

The real success of the two days was the involvement of the private sector, which is being hard hit, and the creation of a framework within which mutually beneficial relationships can be forged with the relevant private sector alongside law enforcement bodies, governments and international organisations to identify trends and recommend solutions to the threat from organised crime. The key to continuing success will be to maintain lasting partnerships that can identify the ongoing threat from organised crime groups and take a proactive role to combat and prevent harm from their activities.

The issues addressed and considered by speakers and delegates broadly centred on the following principal themes:

- The need to establish effective partnerships between the private and public sectors to reduce the impact of organised crime;
- The need to make European criminal intelligence systems mutually compatible, establish common goals and priorities in Member State law enforcement services and work towards a coherent EU information policy for law enforcement investigation purposes;
- The need for a common language on European crime statistics to help in the assessment of crime trends, benchmarking of policy effectiveness and to facilitate valid comparisons;
- The need to establish local, national and European platforms made up of private and public sector stakeholders to focus on crime prevention and to raise public awareness about the harm caused by organised crime;
- The need for a structured system to co-ordinate research and development capability with particular focus on the potential role of science and technology in crime prevention;
- The need for further development of “crime proofing” models both in respect

of legislation products and services as a means of reducing opportunities for crime.

- The need to facilitate and optimize the lawful flow of information, current and historical, on crime and its prevention and detection between the public and private sectors;

The whole of society has a stake in preventing the advance and infiltration of organised crime. Law enforcement alone cannot achieve this objective. In this context, the Congress took note of Article 29 of the Treaty on European Union, which refers to the prevention of crime as one of the means of achieving the Union's objective of providing its citizens with a high level of safety within an area of freedom, security and justice. European leaders have emphasised that crime prevention should also be a common priority in both internal and external policies. The Congress highlighted the importance of incorporating preventive aspects into the fight against organised crime and the development of national prevention programmes. The need to identify common priorities in the Union's international and national prevention policies was also emphasised.

The congress welcomed the European Commission's formation (in May 2001) of the EU Forum for the Prevention of Organised Crime, designed to raise awareness of this phenomenon among private and public stakeholders and to mobilise them through new forms of partnerships. The Congress recognised the importance of effective exchange of information between the relevant stakeholders of the private and public sectors in the fight against organised crime and the need for private sector involvement as an integral part of national criminal intelligence systems.

In this context the Congress concluded that concrete practical measures should be developed to intensify co-operation amongst all sectors affected by organised crime. To this end, and with a view to building on the partnership approach, the Congress recommended that a Protocol at national level, and an EU Action Plan, should be developed to structure co-operation between official agencies and the private sector to strengthen the prevention of and the fight against organised crime. This and other recommendations are listed below:

Recommendations

1. The creation of active partnerships between the private and public sectors, based on mutual trust and a common objective of reducing the harm caused by organised crime, is an effective way to tackle this type of crime and should be developed further. **It is recommended that leaders in the private and public sectors be invited to emphasise their commitment to the fight against Organised Crime by engaging in the formation of partnerships between the public and private sectors at local, national, European and international levels.**

2. **It is recommended that a Protocol on partnerships between the public and private sectors at national level be developed alongside an Action Plan at EU level.** These would identify the key elements required for establishing effective partnerships within the entire European Union to enable private sector stakeholders, law enforcement and government bodies to work together to minimise the harm caused by organised crime. The National Protocols and EU Action Plan should include crime incidence reporting and scoping provisions from the private sector to competent public authorities and extend to data collected by the private sector relevant to sectoral vulnerability studies at local, national and international levels. There is also a need for enhanced dialogue between private and public sector representatives at EU and international levels to support the work done by law enforcement bodies, EU institutions and the Member States. Co-operation and partnership should be encouraged between law enforcement and the private sector in the development of common and compatible intelligence models and the sharing of intelligence data used in these models, taking into consideration relevant domestic and international provisions on data protection and confidentiality. Investigation of the infiltration by organised crime of legitimate business activity frequently requires forensic accounting skills, financial or other sector specific expertise. Since these skills may be lacking in law enforcement and public prosecution services, well defined partnerships will help to bridge knowledge or expertise gaps to ensure a more effective fight against organised crime.

3. In order to establish truly effective law enforcement co-operation at EU level, **it is recommended that EU Member States review their criminal intelligence systems and procedures with a view to rendering them mutually compatible with common minimum standards.** This synchronisation of criminal intelligence systems will help to set a solid basis for an integrated European threat and risk assessment, a co-ordinated law enforcement agenda and effective strategic and operational co-operation, supported by provisions such as 24/7 contact networks based at Europol, safe communication lines and compatible confidentiality rules.

4. The Annual Organised Crime Report prepared by Europol provides the single effective European framework for the documentation of organised crime incidence, trends and threats. Member States are strongly encouraged to continue effective reporting in line with Europol requirements, as the adherence to deadlines is crucial for effective future European policy planning. **It is therefore recommended that Member States bring their national collection, reporting and planning cycle in line with the European process as organised by Europol.** National contributions should be elaborated according to separate national, but co-ordinated timetables. The measurement of economic harm and its impact on economic stability and sustainability is rarely part of classical policing concepts. However, in the context of an output oriented and pragmatic fight against organised crime, economic harm assessments need to gain critical importance as a basis for preventive and repressive policy formulation.
5. In order to optimise European law enforcement co-operation and so provide, among other things, a strong basis for co-operation between the public and private sectors, **it is recommended that the effective collection, storage, analysis and exchange of data must be consistently promoted at EU level under the umbrella of a comprehensive EU law enforcement information policy.** The value of existing data would be enhanced by networking existing databases through data mining and automated collection mechanisms and by using their contents as integral elements of high performing data analysis strategies. Any future action in this area should take account of data protection in law enforcement co-operation and so strike the appropriate balance between robust data protection and data security on the one hand and high performing use of law enforcement data at affordable costs on the other.
6. **It is recommended that a comprehensive system of European crime statistics should be elaborated and a co-ordinated EU Crime Statistics Strategy be developed.** The objective of the strategy should be to provide information necessary for analysing trends, assessing risks, evaluating measures and benchmarking performance. This will be supported by input

from the Crime Experts Group recently set up under the EU Forum for the Prevention of Organised Crime and the EU Crime Prevention Network. The strategy would identify common minimum standards in crime statistics, including agreed definitions of terms and other crime indicators as well as EU-wide information collection methodologies. European Crime Statistics are not complete without the setting up of effective reporting mechanisms between private and public sectors. Crime reporting by private sector bodies, if necessary, sanitised and in line with sectorally expressed sensitivities, should become a structural and systematically requested source of European crime statistics. The private sector should be encouraged to implement processes that will disclose to the competent authorities the true extent of crime losses.

7. Drawing on knowledge derived from European threat assessments, **it is recommended that national platforms involving the fullest possible range of stakeholders from the public and private sectors be established in each country to enhance the co-ordination and development of crime prevention initiatives and raise public awareness of crime prevention.** They should be encouraged to produce annual work programmes, action plans and be properly funded. Issues to be placed high on the agenda of such platforms should include, *inter alia*, national threat and economic risk assessments, including questions related to statistics and database communication, national crime proofing priorities, national and cross-border crime prevention research initiatives, and a broadly focused exchange of best practices. Partnerships between the public and private sectors should be the core of these national platforms and, amongst other things, raise public awareness of both the true impact of organised crime on society and the means of reducing that impact.
8. **It is recommended that an EU Crime Prevention Research Advisory Panel be established, supported by similar arrangements in Member States to include, *inter alia*, academics, scientists, designers and other representatives from the private and public sectors.** These should ensure that the highest level of co-ordination of requirements and sharing of best practice is achieved in the identification of the crime preventive capacity of

science and technology and so minimise the harm from organised crime. Arrangements in Member States could include representatives from regional governments, the private and public sectors, and research bodies with a view to developing local and regional projects aimed at fostering effective crime prevention cultures.

9. Greater effort should be applied to the prevention of crime through the application of “crime proofing” techniques - reducing the opportunities for crime which may be inadvertently created by legislation, products, services and processes. In this context, **it is recommended that an EU Good Practice Guide on designing crime out of legislation, products and services be developed in conjunction with relevant manufacturers, consumer bodies and other stakeholders.** This would identify issues to take into account to enhance the crime resistance of products and services which may have a tendency to become the target or tool for crime. As an element of corporate social responsibility, the relevant private sector should be encouraged to take greater account of crime risks which may be inherent in products and services. This should cover not only crime risks to the internal operations of businesses such as fraud and counterfeiting, but also address crime risk associated with consumer use of products or services.

 10. In order to sustain the momentum of the Congress **it is recommended that a consultative process be launched on the establishment, membership and role of a Steering Group at EU level to deliberate and advise on the Action Plan for tackling organised crime in partnership.** Where actions are to be conducted on a national basis, a similar joint management approach should be encouraged.
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