



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 1 October 2008**

**5001/4/08  
REV 4**

**LIMITE**

<b>CRIMORG</b>	<b>1</b>
<b>ENFOPOL</b>	<b>1</b>
<b>ENFOCUSTOM</b>	<b>1</b>

**NOTE**

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from : General Secretariat  
to : Multidisciplinary Group on organised crime

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No. prev. doc. : 12264/07 CRIMORG 132 ENFOPOL 145 ENFOCUSTOM 86

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Subject : Overview of replies to questionnaire on undercover officers

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**Introduction:**

On 12 June 2007 the Council adopted the Council Resolution on simplifying the cross-border deployment of undercover officers in order to step up Member States' cooperation in the fight against serious cross-border crime (6678/3/07 REV 3 CRIMORG 39). In this resolution, the Council mandates the competent Working Party (i.e. the MDG) to further examine the cross-border deployment of undercover officers (hereinafter sometimes referred to as 'UCO') and to clarify if and to what extent there is need for action at EU level. Should the MDG come to the conclusion that there is a legislative gap to fill, a draft instrument aimed at filling this gap should be submitted no later than 31 December 2008.

As a first step to fulfil the Council's mandate, the Member States were asked to fill out the questionnaire set out in 12264/07 CRIMORG 132 ENFOPOL 145 ENFOCUSTOM 86 by 31 October 2007.

The annex is aimed at providing an overview of the replies received so far. The attempt to present these replies in comparative tables obviously necessitated a certain level of ‘simplification’ of the replies provided by delegations. Inevitably, some nuances in the replies provided by delegations cannot be reflected in these tables. Nevertheless, it is hoped that these comparative tables, which will be updated once the missing replies will be received, will allow the MDG to assess whether and where there is a need for further action at EU level.

Any comment with regard to these tables, can be sent to Guy Stessens:

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**I. General:*****I.1.a) Is the deployment of undercover officers legally admissible in your Member State?***

	AT	BE	BG <sup>1</sup>	CY	CZ <sup>2</sup>	DE	DK	EE <sup>3</sup>	ES	FR	GR	HU	IE <sup>4</sup>	IT	LT	LU <sup>5</sup>	LV	NL <sup>6</sup>	PL <sup>7</sup>	PT	RO	SI	SE	SK	FI <sup>8</sup>	UK	
Yes admissible	X	X	X	X	X	X	X	X	X	X	X	X	NA	X	X		X	X	X	X	X	X	X	X	X	X	X
No, not admissible													NA			X											
Existence of other measures			X		X	X		X		X			NA	X				X			X				X		

<sup>1</sup> The law in BG provides for the conduct of controlled deliveries and confidential transactions with the participation of an undercover officer.

<sup>2</sup> CZ considers the question not clear enough, however to some extent the following institutes may be mentioned in this respect: interception and recording of telecommunications (section 88 of the Code of Criminal Procedure); surveillance of persons and objects (s. 158d of the Code of Criminal Procedure), sham transfer (section 158c of the Code of Criminal Procedure) etc.

<sup>3</sup> In EE, there are similar procedures, but with different legal meaning, in place in the Surveillance Act and the Code of Criminal Procedure

<sup>4</sup> IE: there is no provision in Irish Law to allow for the deployment of foreign undercover officers on Irish territory.

<sup>5</sup> In LU, the undercover officers cannot be deployed for the moment due to a legislative gap. The bill introducing undercover operations is presently being discussed in Parliament.

<sup>6</sup> NL indicates there are three regulations that can serve the same purposes, namely Special Investigative Powers (Cooperation) Decree, Regulation governing infiltration teams, Regulation governing the financial management of infiltration

<sup>7</sup> PL refers to the existence of several law enforcement agencies that have undercover units: the Police, the Border Guard, the Internal Security Agency, the Central Bureau of Anticorruption, the Military Police.

<sup>8</sup> In FI, the general use of human intelligence sources is considered to be the other measure. The request for legal or executive assistance shall be made by a competent authority of the requesting state. The competent authority is provided for in the national legislation, and is usually the police, the prosecution service or the court.

## II. Incoming requests for the deployment of a foreign undercover officer on your territory

### *II. 1) a-c) Under what conditions may the deployment of a foreign undercover officer be approved?*

	AT <sup>1</sup>	BE	BG	CY <sup>2</sup>	CZ	DE	DK	EE <sup>3</sup>	ES <sup>4</sup>	FR	GR <sup>5</sup>	HU	IE <sup>6</sup>	IT	LT	LU	LV	NL	PL	PT	RO <sup>7</sup>	SE	SI	SK	FI	UK
limitation to certain offences/specific criteria	X	X	X	X	X	X	X	X	X	X		X	NA	X	X	X	X	X	X	X		(X <sup>8</sup> )	X	X	X	No

<sup>1</sup> AT links this investigation tool in general to the EAW conditions.

<sup>2</sup> At present, in CY, there is no domestic legislation concerning the deployment of foreign undercover officers. However, the deployment of foreign undercover officers may take place, following:

- bilateral, multilateral agreements or other arrangements under Articles 19 & 20 of the United Nations Convention against Transnational Organized Crime,
- bilateral, multilateral agreements under the United Nations Convention against illicit Traffic in Narcotic Drugs and Psychotropic Substances,
- an agreement with a Member State or a Third Country on police cooperation.

Although Cyprus has ratified the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, this is not considered as an adequate basis for the deployment of foreign undercover officers in the absence of national legislation.

<sup>3</sup> EE has made the reservation to the Article 14 of MLA, but in practice of the State Prosecutor Office “the deployment is not obligatory, but allowed (decided case by case)”

<sup>4</sup> The ES legislation does not provide for in its regulation the use of foreign undercover agents. As an exception, the foreign police officers from other States can carry out particular actions of investigation in Spain providing that they are protected by an applicable convention and strictly subject to the provisions of that convention, or those actions are expressly authorised by the Spanish internal Law.

<sup>5</sup> GR: legislation in force does not include relevant provisions, as Greece has not yet ratified the European Convention on Mutual Judicial Assistance in Criminal Matters (see Art. 14).

<sup>6</sup> IE introduced as a general remark, that while there is nothing explicitly stated, there is nothing in Irish law to prevent Garda officers from operating undercover in this jurisdiction. Garda and Revenue enforcement officers are deployed in drug interdiction and fiscal anti-smuggling operations in this jurisdiction specifically in “controlled delivery” operations and also for surveillance. In conducting such operations, Irish law enforcement agencies are extremely conscious of the rules concerning “agent provocateur”.

<sup>7</sup> In RO, the Romanian legislation does not allow currently the use of foreign undercover investigation officers. However it appears that foreign collaborators (in trafficking drugs cases) and informers (in human beings trafficking cases) are authorised.

<sup>8</sup> SE: no formal limitation, but only serious offences.

	AT <sup>1</sup>	BE	BG	CY <sup>2</sup>	CZ	DE	DK	EE <sup>3</sup>	ES <sup>4</sup>	FR	GR <sup>5</sup>	HU	IE <sup>6</sup>	IT	LT	LU	LV	NL	PL	PT	RO <sup>7</sup>	SE	SI	SK	FI	UK
double criminality		X			X	X	X		No	X		No	NA		No	No	X	No	No					X	X <sup>1</sup>	X
Proportionality and/or subsidiarity	X	X	X	No	X	X	X	X	X	X		X	NA	X	X		X	X	No	X		X	X	X	X	X

*d) Who gives the authorisation to deploy a foreign undercover officer?*

	AT	BE	BG	CY	CZ	DE	DK	EE <sup>2</sup>	ES	FR	HU	IE	IT	LT	LU	LV	NL	PL	PT	RO	SE	SI	SK	FI	UK
authorisation by judicial authority	X <sup>3</sup>	X	X	X	X	X	X <sup>4</sup>	X	X	X	X	NA		X	X	X	X		X		X <sup>5</sup>	X	X		
authorisation by Police or Ministry of Interior				X			X					NA	X	X		X		X	X		X		X <sup>6</sup>	X	X
request of the judicial authority needed	X				X <sup>7</sup>	X					X					X		PL	NA					X	

<sup>1</sup> FI: yes, when coercive measures required.

<sup>2</sup> EE has made the reservation to the Article 14 of MLA, but in practice of the State Prosecutor Office “the deployment is not obligatory, but allowed (decided case by case)”

<sup>3</sup> AT: As from 1 January 2008 the prosecutor will have to order to undercover investigation (instead of the current authorisation given by the court of first instance).

<sup>4</sup> DK: court upon request of commissioner of police district.

<sup>5</sup> SE: within the context of a formal criminal investigation. Within the context of an intelligence operation, the police gives the authorisation.

<sup>6</sup> In SK, in general, there are no supervision possibilities of the office granting this authorisation.

<sup>7</sup> In CZ, the deployment of a foreign undercover officer may be approved under specific conditions as laid down by an international treaty which is binding upon the CZ. The foreign state shall address its request for the deployment of its undercover officer on our territory to the High Prosecuting Attorney’s Office in Prague.

*e) Which are the supervision possibilities of the office granting this authorisation?*

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	HU	IE	IT	LT	LU	LV	NL	PL	PT	RO	SE	SI	SK	FI	UK <sup>1</sup>	
judicial authority (court, public prosecutor)		X	X		X	X		X <sup>2</sup>		X		NA		X	X											
Ministry of Interior/Police	X					X						NA	X	X	X <sup>3</sup>	X					X			X		
Other									X <sup>4</sup>	X	X <sup>5</sup>	NA							X						X	

<sup>1</sup> UK: The Office of Surveillance Commissioners. As to the authorisation process, individuals within public authorities holding offices, ranks or positions prescribed for the purpose by Parliament are designated to authorise the conduct and use of covert human intelligence sources.

<sup>2</sup> ES: The competent magistrate.

<sup>3</sup> LU: Police.

<sup>4</sup> EE: The law enforcement authority.

<sup>5</sup> HU: The law enforcement authority/supervisor.

**II. 1. f) May the authorisation be appealed before a court of law?**

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK <sup>1</sup>	
Yes		X <sup>2</sup>				X <sup>3</sup>	X <sup>4</sup>	X				NA		X	X <sup>5</sup>	X					X							X
No	X		X	X <sup>6</sup>	X					X		NA	X					X	X	X		X	X		X	X		
Not specified									X			NA												X <sup>7</sup>				

<sup>1</sup> In UK, the Investigatory Powers Tribunal has jurisdiction to consider and determine complaints from any individual aggrieved by any conduct of a source he believes to have taken place in relation to him, to any of his property, or to any communication sent by or to him.

<sup>2</sup> BE: Only if the deployment of foreign undercover agents leads to the opening of a criminal investigation in Belgium.

<sup>3</sup> DE: Incidentally in the criminal proceeding.

<sup>4</sup> DK: the authorisation request needs to be approved by a court of law.

<sup>5</sup> LT: In case a judge of a pre-trial investigation refuses to approve the activities of an undercover officer, his ruling can be appealed to a higher court.

<sup>6</sup> CY: The law for JIT's is here applicable.

<sup>7</sup> SI: The proposal and authorisation shall become constitutive parts of the criminal file.

**II. 2.**

*a) Are there any other requirements imposed with regard to the person, qualification or status of the undercover officer?*

No: NL, RO

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK
must be a trained officer acting undercover	X	X	X		X	X	X	X <sup>1</sup>	X			NA	X	X	X			X	X	X	X		X		X	X	X
written undertaking required			X									NA														X <sup>2</sup>	
Special agreement from authorities			X							X		NA															
Cf. MOU				X								NA															

<sup>1</sup> ES: The UCO should be a Criminal Police officer and volunteer.

<sup>2</sup> Finland requires a written request for legal or executive assistance before taking any measures of cooperation.



*b) What status does the foreign undercover officer have under your domestic law?*

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT <sup>1</sup>	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK <sup>2</sup>
Bound by law of MS where he is acting	X	X		X								NA							X				X			X <sup>3</sup>	
Same status as domestic UCO		X	X		X	No	X	X		X		NA			No					X			No	X	X <sup>4</sup>		
See MOU												NA		X													

<sup>1</sup> IT: "interposed person" assisting an Italian judicial police officer

<sup>2</sup> UK: All undercover officers whose conduct is authorised in accordance with law, whether foreign or domestic, come within the definition of a covert human intelligence source.

<sup>3</sup> FI: however, the competencies are not totally corresponding to those of the Finnish undercover officers.

<sup>4</sup> SK: but not all the same investigation powers.

**II. 3. Which information is requested with regard to the person of the undercover officer by the requesting state? Do you demand the undercover officer's identity? If so, who has access to such information?**

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK	
experience background	<sup>1</sup>			<sup>2</sup>								NA		X	X	X							X					
status of the officer		X			X	X	X	X				NA	X		X	X										X	X	
number UCO		X	X									NA						X										
pseudo identity UCO			X					X	X	X		NA				X					X		(X)					
true identity UCO			X			(No) <sup>3</sup>	No	X	(X)			NA	X						X	X	X	X	(X) <sup>4</sup>		X	X	X	
accessible to police (dedicated unit/officer)												NA	X						X	X	X						X	
accessible to prosecutor				X		X		X <sup>5</sup>				NA	X									X	X			X <sup>6</sup>		

<sup>1</sup> AT: no information requested.

<sup>2</sup> CY: information stipulated in the agreement.

<sup>3</sup> DE: but exceptions possible.

<sup>4</sup> SE: identity requirements are assessed on a case-by-case basis.

<sup>5</sup> ES: accessible to the competent judicial authority.

<sup>6</sup> SK: in case of court proceedings.

**II. 4. Do your authorities supervise the undercover officer?**

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK	
Interior Ministry	X		X									NA																
Police (specialised Officer)		X		X		X	X	X		X <sup>1</sup>		NA	X	X		X		X	X	X	X		X	X		X		
Magistrate		X	X		X <sup>2</sup>			X		X		NA				X		X		X								
Not specified									X			NA			X							X			X		X (Yes)	

<sup>1</sup> FR: in case of customs UCO.

<sup>2</sup> CZ: prosecuting attorney. During the actual deployment in the territory of the Czech Republic, the undercover officer's activity is subject to the direction of a designated official of the Police of the Czech Republic.

**II. 5. Is the authorization restricted to specific measures, restricted in time and/or granted on the condition that the deployment can be stopped at any time? (R= renewable)**

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK
Restricted to specific measures		X		X		X			No	X <sup>1</sup>		NA			X <sup>2</sup>	X		X	X <sup>3</sup>		X	X	X <sup>4</sup>			X	X <sup>5</sup>
Limited In time	1m R	3m R	2m 1R <sup>6</sup>	X R	X <sup>7</sup> R	X	X4w R	X	No	4m R		NA		X	X	4m R		X	X	X	X	X	X	2m R	6m R		X
Stoppable At any time		X <sup>8</sup>	X <sup>9</sup>		X <sup>10</sup>	X			No	X		NA	X	X					X	X	X	X	X		X	X	X

<sup>1</sup> FR: offences, identity of UCO and time period of maximum 4 m have to be specified in the habilitation.

<sup>2</sup> LT: judge must indicate in his ruling: UCO, the persons against whom will be acted, criminal offences concerned, actions to be carried out, results sought and time period.

<sup>3</sup> NL: offences which the UCO is 'authorised' to commit.

<sup>4</sup> SE: depends from case to case.

<sup>5</sup> UK: depending upon the specific circumstances of the deployment, the authorisation can be given in general or in very specific terms.

<sup>6</sup> BG: The time period can be renewed twice but the whole period of deployment of UCO can not be more than 6 months.

<sup>7</sup> CZ: there is an obligation of the High Court to specify in its decision the time period during which the undercover officer will be used. However, the law does not determine any maximum period of deployment. Special differing conditions arise from the bilateral agreements with some MS.

<sup>8</sup> BE: in case conditions are not respected.

<sup>9</sup> BG: aims achieved or no (further) results achievable. Danger of disclosure of the UCO identity.

<sup>10</sup> CZ: only if the reasons for the deployment have ceased to exist.

**II. 6. Can a person affected by the deployment of a foreign undercover officer request information from your authorities about the identity of the undercover officer (e.g. after an incident)?**

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI <sup>1</sup>	UK <sup>2</sup>
No		X	X	X	X		X	X	X	X		NA		X	X			X		X				X	X		X
Only, if secrecy has been lifted	X					X						NA											X				
In theory, but in practice not												NA				X			X		X	X					
Yes												NA															

<sup>1</sup> FI: the exposure of the identity depends on the contents of the legislation applicable in different situations.

<sup>2</sup> UK: the competent Court, generally, agrees not to give the names of the police officers to third damaged parties.

**II. 7. a) Does the foreign undercover officer have the same rights as an undercover officer in a domestic investigation procedure in your Member State?**

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK
Yes	X	X	X		X			X	X	X		NA		X		X		X		X	X	NA		X	X	X	X
No						X	X					NA	X		X				X				X				

**b) Is a foreign undercover officer allowed to carry technical means and arms on him/her?**

	AT	BE	BG	CY	CZ <sup>1</sup>	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK
Yes	X	X <sup>2</sup>	X	X	X	X <sup>3</sup>				X		NA			X <sup>4</sup>	X			X <sup>5</sup>		X <sup>6</sup>			X	X	X <sup>7</sup>	
No												NA	X														
Only technical means							X	X	X			NA		X	X			X		X		X <sup>8</sup>	X				X

<sup>1</sup> CZ: however, e.g. sham transfer is subject to an additional authorisation. The weapon may be used only for necessary defence.

<sup>2</sup> BE: Foreign undercover officer may only carry technical means for the purpose of conducting security listenings (on the contrary, a formal request for mutual legal assistance will have to be done before conducting a phone taping).

<sup>3</sup> DE: subject to special authorisation / bilateral agreements.

<sup>4</sup> LT: subject to special authorisation.

<sup>5</sup> NL: subject to special authorisation.

<sup>6</sup> PT: subject to special authorisation.

<sup>7</sup> FI: subject to special authorisation.

<sup>8</sup> RO: only technical means, but subject to special authorisation, only if she/he is authorised as an informer or collaborator.

*c) May he/she enter third-party flats/houses?*

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK
Yes				X <sup>1</sup>	X <sup>2</sup>		X <sup>3</sup>	X <sup>4</sup>	X	X		NA	X <sup>5</sup>		X	X		X	X	X							X <sup>6</sup>
No												NA										X					
With owner's consent	X	X	X	X		X						NA		X							X			X	X	X	

*d) May he/she incite others to commit criminal offences?*

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK
Yes							X					NA				X											
No	X	X	X		X	X		X	X	X		NA	X	X	X			X	X	X	X	X	X	X	X <sup>7</sup>	X	X
Unclear				X								NA															

<sup>1</sup> CY: only with special license.

<sup>2</sup> CZ: should the activity of the undercover officer violate the constitutional principle of inviolability of domicile, a special judicial authorisation would have to be obtained. The approval for deploying an undercover officer does not by itself involve such an authorisation.

<sup>3</sup> DK: in accordance with Danish law and in the company of Danish police officers.

<sup>4</sup> ES: under the leadership of the Spanish acting police officer.

<sup>5</sup> IT: if accompanied by Italian officer and under the terms of the Italian law (ie where necessary after judicial warrant).

<sup>6</sup> UK: if the entry is within the scope of an authorised conduct.

<sup>7</sup> SK: except in some corruption cases, under specific circumstances.

**II. 8. Can the state deploying the undercover officer use the information in subsequent proceedings in accordance with its own principles, or to a limited extent only (e.g. in accordance with certain conditions)?**

SI: No UK: Yes, without exact specification of conditions.

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK
Under national law	X	X <sup>1</sup>			X	X	X	X				NA	X <sup>2</sup>					X <sup>3</sup>		X		X	(X)				
Only, after MLA request			X									NA															
For agreed purposes				X					X	X <sup>4</sup>		NA		X	X				X				X <sup>5</sup>		X <sup>6</sup>	X <sup>7</sup>	
Under int'l agreements												NA									X						

<sup>1</sup> BE: except for security intercepts.

<sup>2</sup> IT: with regard to information obtained by an Italian undercover officer

<sup>3</sup> HU: but UCO will always have to enjoy special witness status.

<sup>4</sup> FR: discretion of magistrate to communicate, under conditions to be determined by him/her, information to the other Member State.

<sup>5</sup> SE: if imposed in the case at hand.

<sup>6</sup> SK: only if the offence is punishable by at least 5 years imprisonment, or is on an offence of corruption, abuse of authority by a public official or money laundering.

<sup>7</sup> FI: if the question refers to a situation in which another state official is deployed in crime prevention in Finland, the later use of information will be allowed under the Finnish national legislation taking into account however what is required by the other state with regard to information received through the channel of legal or executive assistance.



**II. 9. Under what conditions can foreign undercover officers be held responsible under criminal or civil law for activities related to their deployment?**

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK	
Schengen provisions	X											NA																
Articles 14-16 2000 MLA Convention	X	X										NA													X			
Articles 21-22 of 2 <sup>nd</sup> Protocol to CoE MLA Convention			X									NA																
National law		X	X	X	X <sup>1</sup>	X <sup>2</sup>	X	X <sup>3</sup>	X			NA	X	X	X	X		X	X	X	X					X	X	
Not												NA										NA		X				

<sup>1</sup> CZ: foreign undercover officers may be held responsible under criminal or civil law for activities related to their deployment under the same conditions as a domestic undercover officer, unless otherwise provided by an international treaty.

<sup>2</sup> DE: foreign UCOs are treated as private persons, but their identity will be disclosed only in exceptional cases for criminal prosecutions. Regarding civil liability, this is, in relation to third parties, assumed by the German Federal Republic.

<sup>3</sup> ES: not responsible if they act legally, in the same conditions than the Spanish UA.

*II. 10. On what legal basis is the deployment foreign undercover officers authorised?*

See ADD 1 to this document.

**III. Assessment of the importance of undercover officers**

*III. 1. What importance does your Member State attach to the deployment of undercover officers for investigating serious criminal offences, in particular of organised crime and terrorism? (Please indicate on a scale from 0 to 10, with 0 for “no importance” and 10 for “indispensable”)*

*III. 2. What importance does your Member State attach to the cross-border deployment of undercover officers for investigating particularly cross-border serious criminal offences? (Please indicate on a scale from 0 to 10, with 0 for “no importance” and 10 for “indispensable”)*

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FI	FR	GR	IE	IT <sup>1</sup>	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE <sup>2</sup>	UK
1. domestic	10	~ <sup>3</sup>	10	10	10	9	8	10	10	5	7		7		5	10	10		10	10	8	10	10		10
2. cross-border	10	10	10	10	10	9	8	10	10	5	5		0		8	10	10		10	8	7	10	10		10

<sup>1</sup> IT: positive.

<sup>2</sup> SE: increasingly important. Positive experiences so far.

<sup>3</sup> BE: the importance of the deployment of undercover officers has to be assessed within every file. In some investigations, it is the only way to obtain directly or indirectly evidence to convict the suspect at the end.

**IV. Cross-border deployment of undercover officers:**

***IV. 1. What is your experience with regard to the application of Article 14 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and of Article 23 of the Convention on mutual assistance and cooperation between customs administrations (Naples II) ?***

	AT	BE	BG <sup>1</sup>	CY	CZ	DE	DK <sup>2</sup>	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE <sup>3</sup>	FI <sup>4</sup>	SI	SK	UK <sup>5</sup>
Positive					X	X		X		X <sup>6</sup>		NA <sup>7</sup>	X												X		
UCO not regulated in other countries		X																									
UCO techniques not allowed in other countries		X																									
Insufficient guarantees for protecting UCO true identity		X												X													
No specialised UCO unit in other country		X																									

<sup>1</sup> BG: MLA Convention in force for BG as of 1 December 2007.

<sup>2</sup> DK made a declaration not to be bound by Article 14 of the Convention on Mutual Assistance in Criminal Matters.

<sup>3</sup> SE: Limited experience.

<sup>4</sup> FI: Not enough possibility to allow UCO for the purpose of prevention of offences.

<sup>5</sup> UK: The experience exists, as both a requesting and requested MS in both circumstances.

<sup>6</sup> FR: long experience.

<sup>7</sup> IE has not transposed Article 14 of the 2000 convention into Irish Law. In accordance with Article 14.4 of the Convention IE intends to make a declaration at the time of ratification, that it will not be bound by this Article.

	AT	BE	BG <sup>1</sup>	CY	CZ	DE	DK <sup>2</sup>	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE <sup>3</sup>	FI <sup>4</sup>	SI	SK	UK <sup>5</sup>	
Time for approval		X																										
Not applicable or no experiences	X		X	X										X	X			X	X	X <sup>1</sup>	X					X		

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<sup>1</sup> PT: not applicable regarding customs.

*IV. 2. What importance do Eurojust, EJN and Europol have in the cross-border deployment of undercover officers?*

	AT	BE	BG	CY	CZ	DE	DK	ES <sup>1</sup>	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK <sup>2</sup>
Important	X	X <sup>3</sup>	X <sup>4</sup>	X		X						N A				X			X <sup>5</sup>			X			X		
Practically involved					X <sup>6</sup>													X				X					
No experience		X					X		X	X				X	X					X	X		X		X	X	

<sup>1</sup> ES stresses generally the necessity of caution in introducing any other participants in a sensitive issue.

<sup>2</sup> UK underlines their role rather in the facilitation of the authorisation process. On the contrary, these subjects are rarely, if ever, engaged in operational matters. In practice national liaison officers provide a more secure route to facilitate deployments where the true identity of an undercover officer is involved.

<sup>3</sup> BE: From the Belgian point of view, the intervention of Eurojust, EJN and Europol in this field should only be considered if bilateral contacts between interested MS are not satisfactory.

<sup>4</sup> All 2006-2007 operations where BG was involved, also involved Europol.

<sup>5</sup> NL: little role for Europol.

<sup>6</sup> CZ: the use of an undercover officer in the Czech Republic falls within judicial cooperation in criminal matters. Therefore the use of Europol is limited. There are also practical limitations as to the use of EJN.

**IV. 3. In how many cases – if possible per year as from 2002 – has your Member State made a request for mutual assistance to another Member State, aimed at the deployment of an undercover officer? (If no figures are available, please estimate).**

	AT	BE	BG	CY	CZ <sup>1</sup>	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT <sup>2</sup>	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK	
Deployments abroad		5	0	0		50-70	3-5			5		0		10	<sup>2</sup>	0		14		10-15 <sup>3</sup>	5-6	1		3	6-10 <sup>4</sup>	X	+19	
Foreign requests received		6		0								0																
No statistics	X							X	X										X									

<sup>1</sup> CZ cannot provide these data due to the sensitivity of these data.

<sup>2</sup> LT: since 2002 appr. 15 requests in context of operational co-operation.

<sup>3</sup> PL: 10-15 by the police + Plus 2-3 by Border Guard.

<sup>4</sup> SK: for intelligence purposes, none for judicial purposes.

4. In how many of these cases was such request refused by another Member State? (If no statistics are maintained or are available, an estimate in percentages would suffice).

	AT	BE	BG	CY	CZ <sup>1</sup>	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK
		V <sup>2</sup>			0	26 <sup>3</sup>	0			1		NA		10-20%	0	0		0		0	0	0		0	0		0
No statistics or NA	X		X	X				X	X										X				X			X	

IV. 5. In how many cases was the reason provided by the other Member State for the refusal:

	AT	BE	BG	CY	CZ <sup>4</sup>	DE	DK	ES <sup>5</sup>	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK
a) contrary to domestic law	NA	NA	NA	NA			NA		NA	0		NA			NA	NA		NA	NA	X	X	NA	NA	X	X	NA	NA
b) lack of int'l law basis							NA			0										X	X	NA	NA	X	X		NA

<sup>1</sup> CZ: provided the request had the form of a request for legal assistance under an international treaty, none were refused by the requested state.

<sup>2</sup> V = variable figures.

<sup>3</sup> DE: 2005 = 26. Based on this experience, less requests were made in 2006, as a result of which only 2 were refused.

<sup>4</sup> CZ: 0 refusals, see the previous answer.

<sup>5</sup> ES: No data available.



	AT	BE	BG	CY	CZ <sup>4</sup>	DE	DK	ES <sup>5</sup>	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK
c) lack of specific requirements for the deployment of an undercover officer under the law of the requested MS							NA			0				X <sup>1</sup>						X	X	NA	NA	X	X		NA
d) impossibility to reach an agreement under Article 14 of the Convention							NA			0										X	X	NA	NA	X	X		NA
e) specific conditions which your authorities were unable or unwilling to fulfill							NA			0										X	X	NA	NA	X	X		NA
f) other considerations							NA			0		NA											NA				NA

<sup>1</sup> LV: in some cases the requests from other Member States were rejected because of the lack of Latvian regulation regarding the protection of UCO identity at a possible trial.

**IV. 6. In how many cases did a planned deployment fail because it was not possible to request the authorization for a deployment in time?**

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK
	NA	0	NA	NA	0	2	0	0	NA	5		NA		0	0	NA		0	NA	0	0	0	-	0	0		0

**IV. 7. In how many cases— if possible per year as from 2002 – have requests for mutual assistance aimed at the deployment of an undercover officer not been made to other Member States, because (If no figures are available, please estimate).**

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK <sup>1</sup>
Not available	X		X	X	0		0	X	X		NA	X				X			X	0	0	0	X	0	0		
No chances of success		1+			0		0			0	NA			0				0									2
Required conditions impossible or unacceptable		1+			0	20 <sup>2</sup>	0			0	NA			0				0									0
Other reasons					0		0				NA			0	3 <sup>3</sup>			0									0

<sup>1</sup> The respective deployment of a UK undercover officer in another Member State was not possible because the legislation of that Member State did not permit such a deployment

<sup>2</sup> DE: estimate.

<sup>3</sup> LT: legislation of other states made deployment impossible.

**V. Provision of operational cover:**

***V. 1 Which means are used for operational cover of an undercover officer in the context of a national investigation proceedings?***

	AT	BE	BG	CY	CZ <sup>1</sup>	DE	DK	ES <sup>2</sup>	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI <sup>3</sup>	UK <sup>4</sup>	
Fictive identities - Legal documents	X	X	X		X	X	X		X			N A <sup>5</sup>		X				X	X		X	X	X	X	X	X	X	
Store fronts		X	X			X								X				X										
Premises		X				X																X						
Technical means (e.g. direct video/audio control)			X			X				X			X		X			X		X	X	X		X		X		

<sup>1</sup> CZ: In addition, the Czech Republic enables to carry out economic activities the performance of which is conditioned by a special licence, permit or registration. The undercover officer does not need any additional authorisations for the surveillance of persons and objects involving the making of sound, visual or other recordings (this shall not apply to interception and recording of telecommunications).

<sup>2</sup> ES: Not specified in detail. The means used are the same of any other investigation, with more human and material resources, according to the specific particularities.

<sup>3</sup> FI: Under section 33 a of the Police Act of Finland, the police may, when it is essential for preventing the disclosure of surveillance, technical surveillance, pseudo purchases, infiltration and activities involving the use of information sources, use misleading or forged information, make and use misleading or forged register entries and produce and use false documents.

<sup>4</sup> UK: Operational cover can be either specific or non-specific. That may depend upon the lawful authorisation and what activity is being undertaken. There is always a cover officer appointed to manage the security and welfare of the undercover officer, and to provide support to the undercover officer.

<sup>5</sup> IE: there are no rules in national law specifically to deal with undercover operational cover. The normal rules of policing apply.

***V. 2. Can these measures also be used in favor of an undercover officer of another Member State which you allowed to be deployed on your territory?***

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK
Yes	X	X	X	X	X	X <sup>1</sup>	X	X	X	X		NA	X	X	X			X	X	X	X		(X) <sup>2</sup>	X	X	X	X
No												NA				X						X <sup>3</sup>					

*The foreign UCO must have its own fictive identity: BE, BG*

***V. 3. Has your Member State already provided operational cover support to other Member States for undercover officers in the past?***

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK
Yes	X	X	X		X	X	X	X	X	X		NA		X	X			X	X	X	X		X	X	X		X
No				X								NA				X						X				X	

<sup>1</sup> DE: Official identification documents may be provided by German authorities to German citizens only.

<sup>2</sup> SE: not for fictive identities.

<sup>3</sup> RO: no foreign UCO can be deployed on Romanian territory, but foreign informers and collaborators enjoy the same status as Romanian ones.

**V. 4. If the answer to question 3 was no: specify what kind of measures for the provision of operational cover were refused for which legal or factual reasons?**

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK
Not applicable	X	X	X		X	X	X		X	X		X		X	X			X	X	X	X		X	X	X		X
No request received				X																		X					
Legal reasons				X												X											

**V. 5. Do you consider cross-border support as an appropriate means in the provision of operational cover, capable of increasing the investigation success? - Member States that have answered “yes”, have provided the following examples :**

- *International nature of organized crime*
- *Heightened credibility of UCO (language skills, regional origin) – more difficult for the suspects to ‘uncover’ UCO*
- *Better protection of UCO, who can return to his home country*
- *Increased flexibility and continuity to investigation, which could be slower or more risky otherwise.*

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK	
Yes	X	X	X	X	X	X	X	X	X	X		NA		X	X	X		X	X		X	X	X	X	X	X	X	X
No												NA								X								

**VI. Seconding undercover officers abroad:**

***VI. 1. Did your Member State already use undercover agents of other Member States in its own investigation proceedings?***

- If the answer is “yes”, please specify legal basis and experience: *domestic legislation and international agreements on police co-operation and judicial co-operation, domestic criminal procedure legislation, sometimes MOU*
- 
- If the answer is “no”, the explanation often provided was: *no requests received, or lack of legislation (LU)*

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK
Yes	X	X			X	X	X	X	X	X		X	X		X			X	X	X	X		X	X	X	X	X
No				X												X						X					

***VI. 2. Did your Member State already “lend” its own undercover officers to other Member States for their investigations?***

- If the answer is “yes”, please specify (legal basis, experience): *domestic legislation and international agreements on police co-operation and judicial co-operation, domestic criminal procedure legislation, sometimes MOU*
- If the answer is “no”, the explanation often provided was: *no requests received*

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK
Yes	X	X <sup>1</sup>			X	X	X		X	X				X	X			X	X	X	X	X	X	X	X	X	X
No			X	X				X				X	X			X											

<sup>1</sup> BE: 15 demands a year.

## VII. Improvements

**VII. 1. In 6678/3/07 REV 3 CRIMORG 39 the following areas are highlighted in which a need for action may be needed at EU level. Please specify for each item on a scale from 0 to 10 in how far you agree with this assessment (0 = no agreement, 10 = full agreement):**

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT <sup>1</sup>	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK
a) requirement & procedures for cross-border deployment of undercover officers	10	10	7	10	0	10	2	10	5	7		NA		8	10	10		X <sup>2</sup>	5	0	10	10		10	7	8	10
b) Protection of UCO's identity	10	10	9	10	6	10	4	10	10	10		NA		10	10	10		10	1 <sup>3</sup>	10	10	10		10	7	8	<b>10</b>
c) Equal status for national and foreign undercover officers	10	10	10	10	8	6	2	10	5	10		NA		10	10	10		X	1	10	9	10		10	8	6	<b>0</b>
d) Possibility of seconding UCO's abroad	10	10	9	10	0	8	2	10	5	8		NA		10	10	10		6	5	10	9	10		10	10	7	<b>0</b>
e) Cross-border assistance in providing operational cover for UCO's	10	10	7	10	5	7	2	10	10	X		NA		10	10	10		10	5	10	9	10		8	7-10	8	<b>0</b>

<sup>1</sup> IT: Very few cases have been recorded in which a foreign undercover officer, considered as an “*interposed person*” pursuant to the aforementioned article. 97, has operated in Italy. Therefore, due to the poor experience gained during the very short period the new law on undercover operations has been in force, it is not possible to make an assessment capable of giving a full answer to the questions posed.

<sup>2</sup> HU: / = subject to further discussion.

<sup>3</sup> NL: UCO identity protection is an important prerequisite, but this is a highly complex issue for domestic legislation. Much more important to focus on good practical co-operation.

**VII. 2. Is there a further need for action in areas not mentioned above?**

The following areas have been mentioned:

BE: designation of a single contact point in each Member State;

DE: contact with competent authorities in other Member states should be facilitated; clarification as to who is competent

LV: harmonisation of legislation

HU: concentrating on law enforcement (no prevention), further use of evidence obtained through UCO, EAW list, JIT-type model agreement, cost effectiveness, co-operation with FRONTEX, harmonization of civil/criminal liability rules (cf. Prüm)

NL: standardised training by EU, interpretation support by EU

PT: training programmes, increased meetings between relevant units, continuous upgrading of competences

SI: court testimony by UCO – protection of identity

SK: legal regulation for carrying a weapon; contact policeman for foreign UCO

FI: improving int’l co-operation for the prevention of offences

UK: improvement of the cooperation with other MS to enable to deploy the UCO in other MS in comparable circumstances in which the deployment of those foreign UA would be possible in UK with preference for necessity and proportionality criterion rather than the type of investigated crime.

CZ: As the purpose of deploying an undercover officer under Art. 14 of Convention 2000 is obtaining evidence, it would be appropriate for the Member States to explain in what way the results of the work of the undercover officer are used as evidence in their criminal proceedings, in particular whether their courts demand a personal examination of the undercover officer as evidence in the trial and if so, in what manner they protect his/her identity.

RO: Harmonisation of the national legislation

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK
Yes		X		X		X			X									X	X			X		X	X	X	X
No	X		X				X	X		X				X	X	X				X							



**VII. 3. Do you see any need for action to support or facilitate practical cooperation through organisational measures?**

	AT	BE	BG	CY	CZ	DE	DK	ES	EE	FR	GR	IE	IT	LV	LT	LU	MT	HU	NL	PL	PT	RO	SE	SI	SK	FI	UK
Yes		X	X	X		X		X						X		X			X			X		X	X		
No					X		X			X					X											X	

BE: assistance by members from experienced teams is necessary

DE: designation of contact points in each Member State, possibly co-ordinated by Eurojust/Europol; documentation on legal regimes in all Member States; model request form

CY: coordination of various activities

NL: very limited need to provide Eurojust & Europol with a facilitating role. Greater use could be made of existing networks, without formalising them or embedding these into the structure of the EU

PL: court testimony by UCO – protection of identity

SK: mutual meetings, exchange of best practices

UK: no consideration that the need has been demonstrated for such widespread action as the Council Resolution envisages. The responses to this questionnaire will provide an evidence base to help determine what actions should be taken forward. There is also a risk in creating legislation or protocols that are available for public scrutiny – which by virtue of their visibility pose very real risks to any deployment and to the safety of officers.

CZ: not much in favour of harmonization in the area of criminal proceedings. Possible measure on the EU level should definitely avoid being detrimental to more detail ways of regulation already existing between individual Member States.