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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE  
EUROPEAN PARLIAMENT**

**"Developing a strategic concept on tackling organised crime"**

{SEC(2005) 724}

## 1. INTRODUCTION

1. The European Council of 4/5 November 2004 asked the Council and the Commission, under The Hague Programme<sup>1</sup>, to develop a strategic concept on tackling organised crime (OC) at EU-level with Union bodies such as Europol, Eurojust, CEPOL and the Police Chiefs. This Communication constitutes the Commission's contribution to the development of this strategy.
2. Since the Amsterdam Treaty's entry into force, several EU action plans on combating OC have been adopted<sup>2</sup>, the latest being the Millennium Strategy on the prevention and control of OC of 2000.<sup>3</sup> On the Dutch Council Presidency's initiative discussion began in 2004 leading to the adoption of Council conclusions on the development of a strategic concept on tackling OC on 2.12.2004.<sup>4</sup>
3. Various legislative and non-legislative initiatives contributing to the prevention and fight against OC have been adopted at EU-level since the creation of an area of freedom, security and justice. Now time is needed to integrate the different tools and measures (preventive, criminal law and procedural law) taken at local, national or EU level and fill identified gaps. The Union should move to elaborate and implement a counter OC policy, with adequate financial support.
4. Since September 2001, the fight against terrorism became the focus of attention. Although links between OC and terrorism exist, OC continues to pose in itself a threat to society. OC undermines legitimate economies and is a destabilising factor for society's social and democratic fabric. It is therefore welcome that the European Council put combating OC high on the agenda. In fighting this scourge all actors must balance efficient law enforcement and prosecution of OC, and the protection of fundamental rights and freedoms.
5. To develop a strategic concept on tackling OC is a difficult task because the idea of OC remains complex despite several past initiatives defining "criminal organisation".<sup>5</sup> Also, the priority topics identified by the Council on 2.12.2004 are cross-cutting, and include the knowledge base for reducing OC to prevention, law enforcement, judicial cooperation and external relations (cf. section 2). Measures proposed in the present context may therefore effect offences that are not, or not exclusively, OC-related. Conversely, initiatives which implement e.g. the principle of mutual recognition of judicial decisions in criminal matters, impact on many forms of serious cross-border crime. A strategic approach will ensure effective cooperation between all relevant actors.

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<sup>1</sup> OJ C 053 03/03/2005 P.001-0014

<sup>2</sup> Action plan to combat OC (OJ C 251 of 15.8.1997), Council Resolution on the Prevention of OC (OJ C 408 of 29.12.1998), Vienna Action Plan (OJ C19 of 23.1.1999)

<sup>3</sup> OJ C 124 of 3.5.2000

<sup>4</sup> doc. 15050/04 CRIMORG 138; doc. 13463/2/04 REV2 CRIMORG 105

<sup>5</sup> See Joint Action to make it a criminal offence to participate in a criminal organisation in the Member States of the EU (OJ L 333 of 9.12.1998); doc. 6204/2/97 ENFOPOL 35 REV 2; Art. 2 UN Convention Against Transnational OC (A/RES/55/25)

6. Due to the strategic concept's broad scope priority-setting is inevitable within the Communication. Section 2 develops the objectives under the priority topics of the strategic concept on tackling OC. Some aspects are only covered summarily but set out in detail elsewhere.<sup>6</sup> Section 3 summarises the follow-up to the mid-term evaluation of the Millennium Strategy<sup>7</sup>, while section 4 points the way forward. Annex 1 lists the measures for implementing the strategic concept on tackling OC, and corresponding responsibilities with target dates and priority ratings. Annex 2 lists and summarises recently adopted Communications and Council conclusions which are relevant. Annex 3 details the follow-up to the mid-term evaluation of the Millennium Strategy.

## 2. PRIORITY TOPICS AND OBJECTIVES

### 2.1. Improve knowledge of OC and strengthen information gathering and analysis

7. Technological evolution along with increasing globalisation provides new opportunities for OC groups. In order to prevent and counteract OC, knowledge about OC, OC groups and vulnerabilities of the licit sectors has to be gathered and updated to develop better tools, as stated in many of the strategic documents mentioned already, not least The Hague Programme. The future **EU crime statistics system** should collect information from law enforcement agencies and also quantitative information based on citizen and business surveys, as well as **measuring crime and victimisation** in specific groups to aid decision-making in different policy areas. This crime statistics system will be developed in collaboration with Member States, using, as needed, the Community Statistical Programme. Further development, testing and dissemination of a methodology for studies of **economic sectors' vulnerability** to OC are also needed. On this basis the Commission intends to produce an annual or biennial **EU crime report** in the future.
8. The Hague Programme highlighted the need to develop an **EU intelligence-led law enforcement mechanism** to enable decision makers to define European law enforcement strategies based on thorough assessments. Availability of and access to information (cf. section 2.3.3.), production of European criminal intelligence and enhanced trust between law enforcement authorities at European and international level are its core elements. The Commission will present a Communication on an EU intelligence-led law enforcement policy in 2005.
9. Within this policy, a **'European Criminal Intelligence Model'** should be developed to address issues such as coherent intelligence actions products and services of national and EU bodies active in the domain of Justice, Freedom and Security, the synchronisation of national threat assessments based on a common methodology, underpinned by sectoral vulnerability studies, the production of quantitative and qualitative information by the private sector and other relevant data from evolving European crime statistics. A key element of the Model will be a **European OC threat assessment** by Europol as requested in The Hague Programme based on synchronised national assessments.

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<sup>6</sup> Particularly initiatives included in The Hague Programme, e.g. the EU drugs strategy 2005-2012 (doc. 15074/04).

<sup>7</sup> doc 10925/03 CRIMORG 49 of which the JAI Council of 2/3.10.2003 took note.

10. OC-related **research** is currently funded under the 6<sup>th</sup> Research Framework Programme (RFP) and the Preparatory Action for Security Research. It is envisaged that OC-related research would be part of the new Security Research Programme and of other related areas in the proposed 7<sup>th</sup> RFP. Specific research projects to support policy development will also be possible through the **AGIS programme**, any successor under the Financial Perspectives (2007-2013), and **studies funds**.

## 2.2. Strengthen OC prevention

11. An effective crime prevention policy goes beyond classical law enforcement cooperation to include good governance, transparency, accountability and social responsibility standards for the public and private sector to reduce crime opportunities. Some EU Member States have been innovative in using an **administrative approach** to prevent the penetration of legal markets by criminal organisations. The Council recently adopted recommendations<sup>8</sup> that this approach merits further research and dissemination across the EU. At EU level, the Commission intends to develop a model for **crime proofing legislation** and new **products and services** which could be widely disseminated to avoid inadvertently creating new opportunities for OC.
12. One key tool by which OC infiltrates licit markets is **corruption**<sup>9</sup>. Therefore further development and implementation of a comprehensive EU anti-corruption policy including criminal law measures, promotion of ethics and integrity in public administration and improved monitoring of national anti-corruption policies in the context of EU and international obligations and other standards is essential and also timely in order to effectively implement the UN Convention Against Corruption.<sup>10</sup> Fostering public sector transparency is one of the Commission's strategic objectives 2005-2009 and a White Paper on a European Transparency Initiative will follow.
13. The Dublin Declaration<sup>11</sup> recognised **Public Private Partnerships** as an effective tool for preventing crime in general, and OC in particular. The preparation and implementation of an EU Action Plan on Public Private Partnerships is a priority for the Commission in 2006, under The Hague Programme.
14. The prevention of human trafficking, a particularly serious crime involving severe human rights violations, is a primary aim. The Commission will submit a dedicated Communication on combating **trafficking in human beings** in 2005 which will take an integrated, human-rights oriented and victim-centred approach.
15. Under the **Structural Funds financial support** for preventive measures has been available but was rarely used by Member States,<sup>12</sup> contributing to the Commission's proposal to set up a distinct **Security and Safeguarding Liberties Framework Programme** under the Financial Perspectives 2007-2013 to finance such measures.

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<sup>8</sup> doc. 12557/04 CRIMORG 79, doc. 14125/2/04 REV2 CRIMORG 123

<sup>9</sup> cf. COM (2003) 317; Resolution EP No. A5-0367/2003

<sup>10</sup> A/58/422

<sup>11</sup> doc. 16302/03 CRIMORG 96

<sup>12</sup> Italy's Mezzogiorno programme is the notable exception; cf. also Communication: Further Indicative Guidelines for the Candidate Countries COM(2003) 110

## 2.3. Strengthen tools and improve cooperation

### 2.3.1. Strengthen investigation of OC

16. **Special investigation techniques** have proven effective in police, customs' and judicial investigation of cross-border OC. The 2000 Mutual Legal Assistance (MLA) Convention and 2001 Protocol<sup>13</sup> provide for these techniques although neither instrument has yet entered into force, hence the separate Framework Decision (FD) on the use of **Joint Investigation Teams**<sup>14</sup> (JIT). Further work is needed to improve the use of JITs and other special investigation techniques.
17. To speed up and simplify the **obtaining of evidence** across borders, the Commission has proposed the European Evidence Warrant which would for certain types of evidence replace mutual legal assistance.<sup>15</sup> In the medium term the principle of mutual recognition should be extended to cover all types of evidence. The Commission plans several initiatives on **admissibility of evidence** as explained in its Communication on the principle of mutual recognition in criminal matters.<sup>16</sup> These initiatives would enhance mutual trust by ensuring a fair balance between efficient prosecution and defence rights. The **cross border use of intelligence** as evidence is an additional theme requiring further study.
18. As well as the collection of evidence in the context of financial investigations (cf. section 2.3.2.), capturing, safeguarding and exchanging **electronic evidence** is an increasingly relevant issue to be addressed shortly by the Commission as requested by the European Council of 16/17.12.2004.<sup>17</sup>
19. **Data retention** for electronic communication services is an important element in the investigation of criminal offences involving the use of information technology. It requires a balance between effective law enforcement, the protection of fundamental rights and the financial burden which resulting obligations cause to service providers. To meet legal considerations the Commission will submit in 2005 a proposal for a directive as appropriate legal instrument.
20. It is often essential to rely on **witnesses or collaborators of justice** in order to bring key figures of OC groups to justice. Building on two Council Resolutions,<sup>18</sup> the Millennium Strategy suggested further work be done. The Council invited the Commission to work on a witness protection programme for terrorism.<sup>19</sup> Europol developed two useful documents<sup>20</sup> and the Commission is preparing a legal instrument on this.
21. Some EU Member States have created **specialised investigation or prosecutorial services** to deal with OC related offences. Such services are made up of multi-

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<sup>13</sup> OJ C 197 of 12.7.2000, p.1; OJ C 326 of 21.11.2001, p.1

<sup>14</sup> OJ L 162 of 20.6.2002, p.1

<sup>15</sup> COM(2003) 688

<sup>16</sup> COM(2005) 195

<sup>17</sup> doc. 16238/04 CONCL 4, doc 16089/04 JAI 566

<sup>18</sup> OJ C 327 of 7.12.1995, p. 5; OJ C 10 of 11.1.1996, p. 1

<sup>19</sup> Declaration on Combating Terrorism of 25.3.2004

<sup>20</sup> "Basic principles of European Union police co-operation in the field of witness protection" and "Common Criteria for taking a witness into a Protection Programme"; both EU restricted

disciplinary expert teams for complex crime investigations. The Commission encourages all Member States to consider this approach.

### 2.3.2. *Strengthen tools to address financial aspects of OC*

22. Financial gain drives OC. Removing the ability to launder criminal proceeds or to finance criminal activity would significantly impede the motivation and capacity of OC groups. Therefore an **enhanced ability to freeze and confiscate the proceeds of crime** is key to fighting and preventing such criminal activity. The Commission will therefore promote stronger **financial investigation skills** and appropriate legal instruments aiding rapid identification and tracing of illicit financial transfers and other transactions.
23. Three FDs dealing with the **freezing and confiscation of assets**, including extended confiscatory powers have been agreed with one still subject to reservations.<sup>21</sup> The FD on confiscation of crime-related proceeds provides that in using extended confiscation powers, Member States may use non-criminal procedures. Its recitals also refer to the UN Convention on Transnational OC where State Parties may consider the possibility of requiring an offender to show the lawful origin of alleged proceeds of crime, including by reversing the **onus** and/or lightening the **standard of proof**. The Commission will review EU legislation on confiscation of criminal assets in this light. In addition, the Commission will explore standards on the **return of confiscated or forfeited assets as compensation or restitution** to identifiable victims of crime or charitable organisations.
24. The proposed third money laundering Directive<sup>22</sup> strengthens existing Community anti-money laundering legislation by e.g. widening the definition of predicate offences and adding new categories of persons subject to reporting obligations. Yet, to ensure future commitment of financial institutions and others, it should be shown that anti-money laundering reporting generates worthwhile results. For this purpose, **financial intelligence units** must provide adequate **feedback**.
25. Organised criminals use the financial system of a Member State to integrate money from criminal activity carried out in another Member State. Europol seeks to identify links between such criminal activity and related transactions within the framework of the Analysis Work Files, e.g. the “**SUSTRANS**” project. All Member States should actively support this work, by providing high quality data to Europol.
26. The **Protocol to the 2000 MLA Convention** aims at facilitating cooperation in cross-border financial investigations. Due to the low rate of ratification of this Protocol its date of entry into force is uncertain. As the principle of mutual recognition should progressively replace mutual legal assistance the Commission will need to consider new legislative proposals.<sup>23</sup>

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<sup>21</sup> FD 2003/577/JHA of 22.7.2003; FD 2005/212/JHA of 24.2.2005; political agreement was reached in 6/2004 on a draft FD on the application of the principle of mutual recognition to confiscation orders.

<sup>22</sup> COM (2004) 448

<sup>23</sup> Fn 16

2.3.3. *Strengthen the access to and exchange of information and intelligence between law enforcement authorities*

27. The European Council stressed in The Hague Programme that strengthening freedom, security and justice requires an innovative approach to the **cross-border exchange of law enforcement information**. The action plan implementing The Hague Programme will further develop the Commission's initiatives to implement the **principle of availability for the exchange of law enforcement information, common standards for access to databases and interoperability of national and EU databases**. National and EU databases should progressively use the same standards and compatible technologies to ensure the selective exchange of law enforcement data while taking into account the appropriate inter-linkages with international databases. **Personal data protection** and **data security** measures such as proportionality, integrity and confidentiality of data and effective legal remedies must proceed along with these extended possibilities. The Commission will submit a legislative proposal on this in 2005.
28. Intensive **cooperation** between national law enforcement authorities and with relevant EU bodies is necessary to the building of trust. Established information channels e.g. Europol's Virtual Private Network or its Information System should be used and, where appropriate, supplemented by expert networks (cf. section 2.4.).

2.3.4. *Strengthen inter-institutional and cross-jurisdictional cooperation*

29. The Hague Programme stresses the need for **intensified practical cooperation** between police and customs authorities of Member States and with Europol and Eurojust. Prosecutors/judiciary and Eurojust must be involved at an early stage e.g. for wire-tapping or arrest warrants. **Joint customs, police and/or judicial operations** should become a frequent tool of practical cooperation. **Common structures of cooperation in internal border regions** of the Union should be fostered. In addition, the Commission proposes funding joint **EU operations** systematically in the future under financial perspectives 2007-2013. The **Committee on Internal Security** envisaged in Article III-261, Constitutional Treaty, should facilitate the coordination of the action of Member States' competent authorities, focusing on operational cooperation.
30. As a follow-up to the relevant Green Paper<sup>24</sup>, the Commission will undertake an impact assessment and submit a White Paper on a legislative proposal to establish the European Public Prosecutor's (EPP) Office from Eurojust, with responsibility for investigating, prosecuting and bringing to judgement offences against the Union's financial interests under the future Constitutional Treaty<sup>25</sup> and also for the possibility to extend the EPP's powers to serious crime with a cross-border dimension.

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<sup>24</sup> COM (2001) 715 final of 11.12.2001, "Green Paper on criminal-law protection of the financial interests of the Community and the establishment of a European Prosecutor".

<sup>25</sup> Communication from the Commission, Protecting the Communities' financial interests, Fight against fraud, Action Plan for 2004-2005, COM (2004) 544 final.

## 2.4. Improve use of, and strengthen, existing bodies

31. It is important to **ratify and implement the relevant legal instruments** regarding **Europol** and **Eurojust**, including the three protocols<sup>26</sup> to the Europol Convention. The report on the implementation of the Eurojust Decision<sup>27</sup> identified shortcomings, e.g. differences in the judicial powers of national members which hamper its effectiveness.
32. The **potential of Eurojust**<sup>28</sup> and **Europol** in the fight against OC has **yet to be fully exploited** by Member States. Significant multilateral cases should be referred, and serious cross-border crime reported, to Eurojust. The flow of information to Europol is still insufficient. Ways of increasing the systematic forwarding of high quality, live investigative data by Member States must be developed. Implementation of the **Europol Information System** in all Member States will facilitate Europol's access to information on OC.
33. Europol and Eurojust should be more closely involved in the investigation phase of cross-border OC cases and in JITs. The opportunities opened by existing legislation and the Constitutional Treaty with regard to their tasks should be used. More specifically, consideration should be given to enhanced **coordination by Europol and Eurojust for complex cross-border operations and criminal investigations** of serious and OC, providing logistical support, expertise and knowledge of best practice and enhanced use of the **Europol/Eurojust agreement**.
34. **Training** and systematic **exchange programmes** should be promoted via **CEPOL** with funding under the Community budget. The Commission has proposed that these activities grow in size and impact.<sup>29</sup>
35. The **Border Management Agency**, though primarily tasked with improving the implementation of the Schengen *acquis* on control of persons at the external borders, should provide intelligence and play a role in the coordination of operations on illegal immigration-related OC in cooperation with Member States and Europol, and develop an **integrated risk analysis model**.

## 2.5. Improve legislation where needed

36. Offences related to transborder OC justify by their nature and potential impact consideration of a common basis in the Union to combat them. The most recent example is the proposal for a FD on the fight against OC<sup>30</sup> to provide a harmonised definition of offences and penalties of different forms of participation in a criminal organisation. In the Commission's view **approximation of legislation should complement the mutual recognition** of judicial decisions in criminal matters<sup>31</sup>. When adopting the FD on the European Arrest Warrant<sup>32</sup> the Council agreed "to

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<sup>26</sup> OJ C 358 of 13.12.2000, p.1; OJ C 312 of 16.12.2002, p. 1; OJ C 2 of 6.1.2004, p. 1

<sup>27</sup> COM(2004) 457

<sup>28</sup> Council conclusions on an improved use of Eurojust doc. 15285/04, doc. 12561/4/04 REV4

<sup>29</sup> COM(2004) 623

<sup>30</sup> COM(2005) 6

<sup>31</sup> para. 17

<sup>32</sup> OJ L 190 of 18.7.2002, p.1

continue, in accordance with Article 31(e) TEU, the work on approximation of the offences contained in Article 2(2)<sup>33</sup> thereof with a view to arriving at a mutual legal understanding among Member States.<sup>33</sup> The Commission will therefore study the scope for further approximation of legislation in criminal matters e.g. in the fields of counterfeiting, illicit arms trafficking, fraud, especially tax fraud and identity theft, environmental crime, racketeering and extortion.

## 2.6. Improve monitoring and evaluation

37. Several instruments currently provide evaluation of OC policy or contribute to it. They need refinement since The Hague Programme's call for **evaluation** of the implementation, as well as of the effects of Union policies in the area of freedom, security and justice. The Commission regards this as of crucial importance and will present its views on evaluation, bearing in mind **Article III-260** of the Constitutional Treaty in 2006. In the OC context, the future EU crime report and the EU OC Threat Assessments (cf. section 2.1.) will be important tools for an evaluation mechanism on OC-related matters. Evaluations of customs cooperation, anti-corruption policies and fight against financial crime, already announced in respective Communications<sup>34</sup>, should be given priority due to their horizontal impact.

## 2.7. Strengthen co-operation with non-EU countries and international organisations

38. In this era of open borders and global integration and inter-dependence, the **internal security** of the EU is inseparably **linked to external aspects** of security. The external dimension of the EU's response to OC, and other security threats, has developed considerably over recent years. **Bi-lateral, regional and international initiatives**, need to be further refined.

39. Co-operation to tackle OC should be developed further with **priority third countries**, through agreements and other instruments. Such cooperation should include the **promotion of relevant EU benchmarks and international standards**.

40. The EU should promote and support the development of **regional approaches and cooperation** to combat OC, particularly in those regions bordering the EU.

41. The EU should also fully support the development of **multilateral approaches** to combat OC, to ensure comprehensive ratification and implementation of international instruments, such as the UN Conventions on Transnational OC and Corruption, and the development of **international standards** and provisions in other fora such as the Council of Europe, G8, FATF, OSCE and OECD.

42. **Direct cooperation between Europol, Eurojust** on the one hand, **and non-EU countries/bodies** on the other, is essential for developing a European dimension to law enforcement and judicial cooperation beyond EU borders. Europol's strategy on external relations 2004-2006<sup>35</sup> should be pursued further and Eurojust should develop its own external relations strategy.

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<sup>33</sup> doc. 9958/02 ADD1 REV1 JAI 138

<sup>34</sup> COM(2003) 317, COM(2004) 262, COM(2004) 376

<sup>35</sup> doc. 12660/04 EUROPOL 44

## 2.8. Setting priorities for tackling specific forms of OC at EU-level and for follow-up

43. Consensus was reached in the Council's Multi-disciplinary Group to analyse Europol's OC Report, consult with Eurojust and Europol, and then forward the result to the relevant bodies of the Council with a view to identifying a limited number of yearly strategic priorities in the fight against OC.<sup>36</sup>
44. The Hague Programme establishes that the Council should use the yearly OC threat assessments by Europol to establish such priorities as of 2006. In order to make it possible for Europol to fulfil this requirement, work on intelligence-led law enforcement must be taken further without delay. This will require significant efforts not only from Europol, but equally from Member States and competent EU bodies (cf. section 2.1.)

## 3. SUMMARY OF FOLLOW-UP TO THE CONCLUSIONS OF THE MID-TERM EVALUATION REPORT ON THE MILLENNIUM STRATEGY

45. The conclusions of the mid-term evaluation of the Millennium Strategy identified six recommendations for further action. Dealing with **drugs trafficking** has been met with the Council's adoption of a FD approximating legislation in the field of drug trafficking in October 2004.<sup>37</sup> Follow-up work on the other five recommendations is underway. The Commission proposed legislation<sup>38</sup> and adopted a White Paper on the **exchange of information on convictions**<sup>39</sup>; a Communication on **disqualifications** will follow later in 2005. The proposal for a Third Money Laundering Directive<sup>40</sup> includes a provision to prevent the use of **large-scale cash payments** for money laundering purposes. The development of **comparable crime statistics** is a long term project on which the Commission is engaged along with other stakeholders. It will present an Action Plan on EU Crime Statistics during 2005. A study has been launched on **fiscal fraud**. Its results are expected in July 2005. The Commission (OLAF) and Europol, within their respective legal frameworks will provide assistance to Member States in the format of a **service platform for joint customs operations** in 2005. Finally, the Commission is currently working on a proposal on the **protection of witnesses and collaborators of justice**.

## 4. THE WAY FORWARD

46. This Communication spells out the strategic concept on tackling OC in terms of objectives. Annex 1 comprises a list of implementing actions within a 5 year perspective. Once adopted by the Council, the strategic concept on tackling OC should complement the action plan implementing The Hague Programme as it contributes to strengthening freedom, security and justice in the Union. Building and integrating the different elements for a European criminal intelligence model is the

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<sup>36</sup> doc. 16183/04 CRIMORG 152

<sup>37</sup> OJ L335 of 11.11.2004, p. 8

<sup>38</sup> COM(2004) 664

<sup>39</sup> COM(2005) 10

<sup>40</sup> COM(2004) 448

most important task ahead, and will require a shared effort by Member States and EU institutions and bodies.

47. The strategic concept should be considered a living document. The Commission is invited to present to the Council a yearly report on the implementation of The Hague programme (scoreboard) which would incorporate a progress report on the strategic concept. Alternatively, it could be evaluated separately in order for this evaluation to be tuned to the process of annually identifying strategic priorities in the fight against OC at EU level.
48. A specific evaluation of the strategic concept is recommended at the end of 2006 to provide a benchmark before implementation of the financial perspectives 2007-2013 and in view of the entry into force of the Constitutional Treaty.