

strafrecht aan de Katholieke Universiteit Brabant.

Centraal staan begrijpelijkerwijze thema's die hetzij onder het oorlogsstrafrecht, hetzij onder de internationale rechtshulp in strafzaken ressorteren, hetgeen niet betekent dat algemene onderwerpen – b.v. levenslange straffen – c.q. uiterst actuele procedures – b.v. de uitleveringsperikelen in de zaak Pinochet – niet aan bod komen. Hierna volgt een kleine selectie uit de meer origineletitels: de Nederlandse Rijnvaartoverredingen (W.E. HAAK), “international criminal defence” (J.M. SJÖCRONA), (op)sporen op internet (U. VAN DE POL) en internationale communicatie over nationaal recht (D. SCHAFFMEISTER).

F. THOMAS

3. Strategieën van de EU en de VS ter bestrijding van transnationale georganiseerde criminaliteit

Van 23 tot 26 januari 2001 werd te Gent een internationale conferentie gehouden inzake strategieën van de EU en de VS ter bestrijding van transnationale georganiseerde criminaliteit (EU and US Strategies in Combating Transnational Organized Crime). De conferentie kaderde in de voorbereiding van het Belgisch Voorzitterschap van de Raad van de EU tijdens de tweede helft van dit jaar, en bracht beleidsmakers, politieke en justitiële autoriteiten en andere relevante actoren samen met het oog op de bespreking van belangrijke probleempunten inzake de bestrijding van georganiseerde misdaad in de Europese Unie. De conferentie werd gehouden in een uitstekende verstandhouding met het Zweeds EU-Voorzitterschap, zodat de conclusies ervan zowel het Zweedse als het Belgische Voorzitterschap van nut kunnen zijn.

Hoewel de voornaamste bedoeling van de conferentie was de verdere ontwikkeling van het EU-beleid inzake georganiseerde criminaliteit gestalte te geven, werd ook uitdrukkelijk aandacht besteed aan de relatie ter zake van de EU met de kandidaat-lidstaten en de Verenigde Staten.

Werkgroepen hebben conclusies en aanbevelingen geformuleerd en aangenomen over volgende 10 sleutelonderwerpen: integriteit van en controle op informatie-uitwisseling, grensoverschrijdende operationele activiteiten, het internationaal/regionaal juridisch kader ter bestrijding van georganiseerde criminaliteit, het verzamelen van *intelligence* in de context van vredesmissies, training van wetshandhavingsauthori-

teiten, integriteit/corruptie, drughandel, mensenhandel, witwassen en cyber-criminaliteit.

Deze conclusies en aanbevelingen worden, samen met de inleidingen van de plenaire sprekers en voorbereidende rapporten van de leiders van de diverse werkgroepen, gepubliceerd in: B. DE RUYVER, G. VERMEULEN en T. VANDER BEKEN (red.), *Strategies of the EU and the US in Combating Transnational Organized Crime*, Antwerpen-Apeldoorn, Maklu, 2001.

Gezien hun ruime relevantie voor diverse practici, beleidsmakers en onderzoekers die met het onderwerp van transnationale georganiseerde misdaad worden geconfronteerd, worden de conclusies en aanbevelingen van de diverse werkgroepen hierna reeds, in de voertaal van de conferentie, weergegeven.

WORKSHOP 1: INTEGRITY OF AND CONTROL ON INFORMATION EXCHANGE

Considerations

Without necessarily being underwritten by all participants, the workshop recognized that out of the reports and exchange of views between its participants, the following points of interest were brought to attention:

Of general concern:

Integrity, data protection and confidence ensure not only the solid basis of the common efforts for the parties interested in the fight against organized crime, but constitute as well the cement between all parts of the every day co-operation.

Increase in data – traffic requires an effective protection in order to safeguard integrity and conformity with data protection rules.

The fight against transborder crime should be facilitated by modern means of information processing, while it is still often hampered by national laws based on geographical concepts of sovereignty.

There is a lot of information and knowledge in this field, but it is scattered over numerous agencies.

The lack of uniformity in the different legal standards with regard to data protection brings confusion for the user in general and the data subject in particular.

To ensure the integrity of the data and their lawful use, an accountable, reliable and effective police organization is a pre condition.

There is a need to develop a common ‘transatlantic’ criminal intelligence model in order to establish shared concepts and procedures in the exchange of information.

Linked to this is the need to clarify perceptions of the volume and kind of data law enforcement agencies need.

There is a mutual lack of a full knowledge with regard to the equivalence of data protection rules between the USA and the European Union.

In the field of data protection, there are too many sets of regulations. This leads to over-regulation, which might require re-regulation

Of EU concern:

Centralization seems to be a particular feature in the belief that the central co-ordination of international information exchange benefits the efficiency and transparency.

There is a too limited involvement of the judiciary in the monitoring of the European police co-operation (e.g. Europol).

There is a need for data protection regulations with regard to Eurojust.

There is a lack of transparency towards political authorities as well as towards individuals subject to information processing. At the level of the European Union there is a good cause for a greater involvement of the EU Parliament.

Recommendations

The workshop suggests that attention should be paid to:

The setting up of mutually acceptable standards to gain access to and to process information including personal data. An appropriate level of legal monitoring of the information exchange in the international law enforcement collaboration.

The strengthening of the involvement of the European Union Parliament in addressing the need for democratic transparency in the field of international law enforcement information exchanges.

The attempts towards a horizontal approach with regard to data protection, to be encouraged within the European Union.

The exploration of the possibility of a transnational dialogue between public prosecutors.

The development of a 'transnational criminal intelligence model'.

The setting up at European level of central bodies with an overall responsibility for the information management.

The development of mutually acceptable security obligations in information processing at international level.

The inclusion of data protection rules in the Eurojust concept, particularly in the light of its possible needs for international information exchange.

The need for reciprocal information (EU, USA and candidate countries) on the overview of data protection regulations, including federal and state statutory provisions, case law and other applicable legal principles.

Continue an ongoing US-EU dialogue on bridging data protection matters in the law enforcement area.

The development of a flexible legal framework and technical facilities permitting police authorities in the fight against organized crime to fully exploit the benefits of the information technology.

Declarations

To develop good practices in view to realize the recommendations the workshop asks all competent authorities to discuss about the topic during the forthcoming transatlantic dialogues.

The workshop asks the US and EU (Europol) competent authorities to explore all possibilities in view to overcome the difficulties in exchanging personal data between the European organization and the USA law enforcement services.

WORKSHOP 2: TRANSBORDER OPERATIONAL ACTIVITIES

Considerations

The workshop discussed the increasing types and number of crossborder enforcement operations and the need for closer cooperation at the operational and structural level. The members emphasized the close cooperation between EU members, EU members and the candidate countries, and transatlantic cooperation.

Due to different national legislation the same investigative techniques cannot be used in all countries.

Recommendations

The workshop welcomes the legal initiatives at national, EU and worldwide levels. The workshop has the following recommendations:

1. Universal Level

The December 12 2000 UN Convention Against Transnational Organized Crime provides for mechanisms and framework for new types of transborder operations; such as joint investigations, special investigative techniques, and protection of witnesses. The EU, in cooperation with the U.S. and other countries and international organizations, should consider providing for best

practice and model agreements and/or arrangements to implement these techniques.

2. EU Level

The EU Convention on Mutual Assistance of 29 May 2000 gives new legal basis for crossborder operations, such as controlled deliveries and undercover activities. To facilitate the effective use of the new techniques requires use of best practices, common standards, and harmonization.

Article 13 of the new Convention permits establishment of joint investigation teams. To ensure maximum effectiveness at an operational level, the Member States should, in legally implementing this article, allow for the team leader of a joint investigation team to entrust foreign team members with the competence of taking investigative measures similar to those that can be taken by the law enforcement authorities of the state where the team is operating.

The Working Group stresses, from a pragmatic perspective, a horizontal approach to police cooperation. The bilateral liaison officers will add value. To improve the effectiveness of cooperation, central judicial contact points with operational competence are essential.

3. Candidate Level

The aquis provides adequate basis for the candidate countries to continue transforming their policies, laws, and practices to cooperate effectively with the EU against transnational organized crime.

Finally, crossborder enforcement cooperation must continue to integrate protections under fundamental human right conventions and particularly adhere to the principles of legality; subsidiarity; and proportionality.

WORKSHOP 3: INTERNATIONAL/REGIONAL LEGAL FRAMEWORK FOR COMBATING ORGANIZED CRIME

1. EU

The Member States should speedily implement the new UN legal framework – for some aspects even before ratification – as well as the Council of Europe legal framework.

The Member States should continue their efforts in speedily implementing the EU 3rd pillar legal instruments that have been carefully designed over the past few years in order to substantially improve traditional co-operation mechanisms.

Eurojust should have the principal role in coordinating investigations and prosecutions, taking due account of the interests of 3rd states and in line with the existing draft decision setting up Eurojust, with due respect for the obligation for Europol to inform the Member States of cases that they should investigate.

A revision of the Europol Convention is required for the participation in a support capacity of Europol representatives in joint investigation teams.

The workshop stresses the importance of mutual recognition of pending investigations and prosecutions as well as of an improved application of the *ne bis in idem* principle, taking due account of the interests of 3rd states.

2. Relationship EU-Candidate Member States

The workshop stresses the importance of a full involvement of EU key actors (Council, Commission, ...) in regional initiatives – such as the Southern European Co-operation Initiative (SECI) and the Black Sea Economic Co-operation (BSEC) – in order to prevent that these initiatives would be contraproductive for accession to the EU or incompatible with the EU acquis.

The Candidate Member States should speedily implement the Council of Europe legal framework. They should also speedily implement the new UN legal framework – for some aspects even before ratification – with the technical and/or financial assistance of the EU and the US.

The workshop stresses the importance of further and intensified technical assistance and information on the EU legal framework (through Chapter 24 negotiations, EU/PHARE assistance projects, twinning projects by EU Member States, ...)

3. Transatlantic Dialogue (EU-US)

The workshop stresses the importance of an intensified EU-US dialogue – with respect for the existing agenda of the Transatlantic Dialogue – in search of a mechanism allowing for Europol-US exchange of information, ensuring that information can be exchanged to facilitate effective action by law enforcement authorities.

It is recommended to also intensify the EU-US dialogue with respect to actions that are contemplated on either side that might impact on the law enforcement interests of the parties.

The US should speedily implement – for some aspects even before ratification – the new UN legal framework.

The EU and the US should co-ordinate technical and/or financial assistance to other signatory parties to the new UN Convention against Transnational Organized Crime.

The US should consider accession to Council of Europe conventions open to it.

States that do not extradite their nationals should consider endorsing the principles on 'aut dedere aut judicare' as adopted by the G8 Lyon Group.

WORKSHOP 4: INTELLIGENCE GATHERING IN THE CONTEXT OF PEACEKEEPING ACTIVITIES

Considerations

Since the start of peace keeping operations by military forces, the police is more and more involved in this kind of operations with a variety in tasks: training, advice, verification, observation, monitoring and for the first time in UN-history a law enforcement task in Kosovo. Not as a separate mission, but in close co-operation with the military elements and other international organizations.

In accordance with the meaning of the conception, a peace keeping operation will only be implemented when peace has been achieved after a crisis situation. But governmental institutions mainly do not exist or are not functioning. Society is still in disorder, especially in the domain of law and order.. In the majority of cases, the relationship amongst the groups of local population are disturbed. Mutual mistrust and hate easily escalate into violence and acts of revenge.

In this kind of crisis situations criminal elements have a golden opportunity to take their chance. Knowing that a high rate of officials easily can be corrupted, that borders are not controlled in an optimal way, that the present international bodies are dealing with high amounts of money, the local criminality can rapidly change into organized crime.

In the above described situation, the peace keeping organizations including the police unit, start their jobs. The military with its heavy equipment will mainly be dealing with the overall security in the region. The tasks for the police, depending on the mandate, will mainly be to support and monitor the local police in restoring law and order, which is essential for the establishment of governmental institutions on the way to a workable and safe society.

Conclusions

Crisis areas are major sources of transnational organized crime activities.

Police intelligence is vital for the restoration of law and order in a crisis situation.

Often police missions have a fundamental lack of reliable police intelligence once deployed in the mission area. Normal sources of intelligence such as, local police, citizen co-operation, proper data banks etc. are not effective.

Deployed military peace keeping units have qualified intelligence organizations at their disposal, who have important information that is necessary for efficient police operations.

International Civilian Police units must compose the intelligence unit out of the actual strength once deployed. There is no process to ensure that the mission receives the necessary specialists for this unique type of police work.

At the start of a peace-keeping mission there is no liaison foreseen with the military, other international bodies and/or organizations to exchange intelligence. In many cases the different mandates block this kind of exchange.

The applicable laws in the crisis area do not allow enforcement agencies to use modern intelligence gathering techniques.

Recommendations

International organizations (UN, EU, OSCE) should, in the planning phases, make the necessary preparations to launch a police mission (structure, regulations, personnel, logistics, military liaison). This would enable the deployment of established elements including a police intelligence unit. The latest EU-initiative for a non-military crisis management should be embraced.

In anticipation of deployment a training program be established to prepare international police for intelligence gathering.

A workable mandate for the police mission must be created in which the police mission legally can gather police intelligence and use it as evidence.

Establish an effective liaison system with the military, local judiciary and police in order to exchange intelligence information.

Formal admittance to the databases of international police organizations, such as INTERPOL, EUROPOL and the Schengen Information System (SIS) should be established.

A process for extradition needs to be established

Budgets should be prepared to enable an effective police intelligence system (professional equipment and \$\$\$ to pay informants).

Participating countries in police missions should send qualified police intelligence officers into the mission area.

The EU should liaise with the UN regarding their experience in setting up police missions (see Report of the Panel on United Nations Peace Keeping - Brahimi Report).

WORKSHOP 5: TRAINING OF LAW ENFORCEMENT AUTHORITIES

1. The participants to the workshop underline the necessity of evaluation of the Council Decision setting up the European Police College, which entered into force on 1 January 2001, within 3 years. In this evaluation one should consider to what extent not only senior officers but also lower level officials must be included in the training activities of the European Police College. In the evaluation, one should also take into account to what extent this College really is an added value to existing national strategies. In addition, one should consider high-level education of officials of the applicant countries in matters such as border policing.

2. Policing has become a very qualified profession. That is why the European Police College should also incorporate a research component, and bridges should be built to research groups, institutions and programs all over Europe.

3. The European Police College should establish relationships with university programmes that confer advanced degrees.

4. Part of the curriculum should be to take traineeship in other Member States in order to become more familiar with the divergent law enforcement systems. By doing so, the European Police College could contribute to the approximation of legal systems in Europe.

5. The modern law-enforcer has a multidisciplinary profile. This should be reflected by the curriculum, as well as by the composition of the staff. The instructors should cover several relevant disciplines and fields of experience.

6. All training, undertaken by the European Police College, should not only focus on the technical, but also on the human side of policing. Due attention must be paid to not only repressive matters, but also issues of prevention and of protection of human rights.

7. Special care must be taken of the production of adequate teaching materials.

8. The staff should reflect the composition of the European Union: nationals of all Member States should be recruited in order to represent the different traditions of the Member States.

9. The College should reach out to initiatives that are already being carried out in the applicant countries. The institutes that already do exist in these countries must have a link to the European Police College.

10. The College should try to establish a good relationship with the International Law Enforcement Academy in Budapest.

11. If the objective of the European Police College is, amongst others, to ensure a better combat against organised crime, in time, this initiative should be opened to police officers from all over the world.

WORKSHOP 6: INTEGRITY/CORRUPTION

There was a time when the greatest act of betrayal was regarded as one police officer reporting another. Our aim should be for the greatest act of betrayal to be regarded as the failure of a police officer to report an officer committing an act of corruption.

Conclusions

We concluded that corruption as a threat to the investigation and reduction of organised crime is a constant. Too long corruption has been regarded as a cyclical event that is exposed, tackled and eliminated. Organised Crime is a business – an illegal business – but law enforcement activities will be regarded as a threat to the offenders who will look to counteract that threat and use corruption as their prime tool.

Accepting this as a constant and putting in place appropriate strategies and resources dramatically reduces the level of threat and increases our efficiency.

Recommendations

The workshop concluded that there were three fundamental issues which needed to be addressed and a series of specifics which we have categorised under the headings: public statements, visibility and operational strategies.

The fundamental issues

– Status issues

Corruption will not be successfully addressed by a law enforcement service that does not have the regard of the Government or the public. Such a service will remain under resourced and others chosen to tackle the problem. A first action must be to create respected, efficient services.

– The ‘catch 22’

Law enforcement officers must receive equitable compensation for their role. However, for new democracies this may not be affordable without reducing the levels of the service and thus reducing its effectiveness below critical size. Alternative ways of providing rewards for example such as providing housing benefits or educational opportunities might be used. As economies improve, the recognition of the pivotal nature of law enforcement to the promotion of a stable safe business environment is essential.

– Hiring and promotion based on merit with objective standards

Competence in effective, efficient and honest law enforcement work should be the basis for all selection and promotion.

Public statements

– Create a supportive environment for reporting
Reporting of irregularities should not depend upon the courage of individuals. Officials who report wrongdoing should not suffer as a consequence.

– Public contract

An expectation of what the State will provide for the safety and security of the reporter or witness to corruption must be public and clear.

– Norms and values

The ethical values and expectations of law enforcement organisations must be clear to officers and public alike.

– Code of conduct

Each organisation involved in law enforcement should publish the Code of Conduct by which its members will be judged. This should be open to members and public alike.

– Define and provide training for relevant ethical standards

The assimilation of ethics is not a casual process. There should be the positive promotion of ethical standards in training, reinforced by managers within the workplace.

– Compliance procedures

The standards and practices of key law enforcement processes must be defined, published and observed.

– Tell the public the standards they can expect

The public should have complete transparency of all the above.

– Promoting established EU standards

Many established EU standards already exist that are accepted by the public and courts. These should be positively promoted in both the EU and outside.

– Visibility

Identify an authority or person to whom corruption may be reported.

There should be no doubt that corruption is to be tackled. There should be no secrecy about it. There should be absolute clarity who is the responsible person within an organisation or the responsible organisation who has responsibility for action under the law.

– Sufficient independence to guarantee that actions and decisions are free from improper influences

The ability for individuals to exert improper influence upon the decision to investigate, resource an investigation or to institute disciplinary or criminal proceedings must not exist.

– A safe environment for witnesses

In the event of specific protection being required for witnesses, this should genuinely provide them with safety and the ability to carry on their life at the same level as previously.

– A sanction policy and public accountability of the policy in action

The public and members of law enforcement organisations should be aware of the sanctions that exist for transgression of rules, procedures or laws. The sanctions should be proportionate to the transgression but set at a level which reflects that a high standard of behaviour is expected from all officials engaged in law enforcement activity. There should be public visibility of the application of such sanctions.

– Promotion of standards in all forms of professional and public life

Law enforcement agencies should not be singled out for special attention. There should be the promotion of standards in all forms of professional and public life.

– Transparency/ free and uncensored distribution by the media of information concerning corruption

A free uncensored media is an essential anti-corruption control. Appropriate precautions however, have to be taken to protect individuals, operations and methodologies but these apart, the media and its role should be respected and welcomed.

Investigative strategies

– Know “how” assistance

There should be extensive sharing of best practice. The existing EU funding programmes provide the ideal method of promoting the exchange of such best practice.

– Promoting understanding of the impact and consequences of corruption

Explaining how to tackle corruption is not enough. All law enforcement agencies must thoroughly understand, at all levels, the corrosive nature of corruption and the damage it can cause. Only by such thorough understanding will the commitment required by each individual be understood and the consequential resource burden valued for its contribution to the overall impact on Organised Crime.

– Specific OC operational precautions

Best practice now exists in a number of Member States concerning sound preventative precautions within those specific organisations charged with tackling Organised Crime. Such preventative sub-strategies can provide substantial security from corruption and the basis for effective investigation should corruption occur. Such best practice must be widely promulgated and practised.

– Effective anti-corruption investigation

The competence of those responsible for anti-corruption investigation must be at least equal to those involved in the investigation of Organised Crime. It is an investigative task of at least equal difficulty.

– Tackle the little issues to address the culture base, tackle the big issues to maintain effectiveness and public confidence

Strategies to tackle corruption in respect of Organised Crime cannot be fully effective if the general law enforcement activity has a low ethical base. The cultural base of general law enforcement must receive equal attention but in a manner commensurate to the problem.

WORKSHOP 7: DRUG TRAFFICKING

Considerations

The workgroup stresses the need for an integrated, multidisciplinary and balanced approach. The drug problem has to be tackled from all angles at different times. There are no clear cut answers and solutions.

Data protection is an important issue that affects both the internal relationships of the EU Member States and their external relations.

The workgroup stresses that law enforcement should focus more on dismantling criminal organizations instead of focusing on statistical data relating to seizures of drugs.

The bilateral relations and initiatives between countries are valued greatly by the workgroup.

Recommendations

1. Evidence

Evidence legally collected in one Member State should be acceptable in the legal systems of other States.

2. Sharing of strategies

A process should be developed for Member States to exchange best practices among themselves, as well as with third countries.

3. Sharing of intelligence

A framework or formal method should be developed for Member States with a view to better intelligence sharing practices and exchange of experiences.

4. Joint teams

The workgroup acknowledges the importance of establishing joint teams, which should be implemented by bilateral agreements, pending the entering into force of the EU Convention on mutual assistance.

5. Effective measurement

The impact of policies and activities should be measured, which presupposes an agreement on criteria for the evaluation of their effectiveness.

6. Profiling drugs

Acknowledging the efforts made in profiling amphetamines and XTC, the workgroup stresses

the need for a legal basis to profile in a similar way other illicit drugs throughout the EU.

7. Precursors

Considering the major use of precursors in the drugs production, the workgroup recommends improving abilities to identify samples and urges the greater use of fingerprinting or markers of precursors.

8. Proceeds

Expensive, sophisticated, multinational investigations should be underpinned by use of a joint fund, created with seized proceeds that are contributed on a voluntary basis by the participating States.

9. Candidate countries

In order to keep an adequate level of drug-enforcement, the ongoing effort within the PHARE-program should be extended. In addition to that, training and assistance between Member States and these countries should be enhanced.

As soon as possible, candidate countries should be invited to participate in the European judicial network.

10. Multinational targeting

The Member States should develop a methodology to identify and target the major criminal drug organizations, having significant impact within the EU Member States.

This targeting process should then be expanded to multilateral co-operation with non-EU Member States.

WORKSHOP 8: TRAFFICKING IN HUMAN BEINGS

I. General

1. The Member States, the Candidate Member States and the US are recommended to take steps to ratify existing conventions relevant for the fight against trafficking in human beings, including the new UN Convention on Transnational Organised Crime as well as its protocols.

2. Trafficking in human beings requires an integrated approach on national and international level. An integrated approach implies:

a. focusing both on the push factors in the countries of origin (low wages, lack of economic perspectives, the ideal image of the West,

travel agencies, human traffickers and smugglers, ...) and the pull factors in the countries of destination (especially the demand for cheap and exploitable labour force in the sectors of clandestine employment and prostitution).

One should not neglect the position of transit countries.

b. an intense co-operation between countries of destination (such as the EU and the US), transit countries and countries of origin in targeting the push and pull factors

c. a multidisciplinary approach, giving attention to:

– the prevention of trafficking in human beings (public awareness programmes, ...)

– administrative law: migration policy, prevention of the abuse of various migration channels such as adoption, au pair, tourist visa, dubious marriage agencies, forgery of passports and documents

– labour law: combating clandestine labour circuits and exploitation in the prostitution sector. ...

– criminal law: legislation, investigation, prosecution, punishment and confiscation, ...

– the support of victims, in co-operation with NGO's (e.g. by social support or by issuing permits of stay for victims co-operating with the judicial system in appropriate cases, ...)

II. EU

The workgroup takes note of the Commission proposal for a framework decision on combating trafficking in human beings that inter alia would result in approximation of incriminations and penalties for trafficking in human beings – in line with the Tampere conclusions – and recommends its speedy examination. The adoption of a framework decision could lead sooner to a number of the results envisaged by the TOC protocol, depending on its compatibility with the TOC protocol.

III. EU-Candidate Member States

The EU should assist the candidate Member States in preparing and implementing a multidisciplinary approach (e.g. through continuation of Phare & STOP/Daphne/Falcone projects, evaluation of the candidate Member States Chapter 24 efforts, twinning, ...).

IV. Transatlantic Dialogue

The workgroup recommends that, within the context of the Transatlantic Dialogue, the EU and the US co-operate in preparing the Conference of State Parties (TOC).

The EU and the US should support the countries of origin in developing an economic and social policy relating to the push factors, in order to prevent human trafficking.

The EU and the US should support dignified re/integration of the victims of human trafficking, in co-operation with the NGO's in sending and receiving countries and with international organisations such as IOM.

WORKSHOP 9: MONEY LAUNDERING

1. Consideration should be given to new ways of solving the legal problems that impede the efficiency of the anti-money laundering effort, if necessary by legislative initiatives. The following steps may be worthy of consideration:

- alleviation of the burden of proving specific predicates for money laundering offences,
- criminalisation of self laundering,
- reversing the burden of proof in confiscation matters,
- separation of confiscation proceedings from the predicate investigation and prosecution,
- creation of specialised units charged with tracing, seizing and managing criminal assets.

2. To raise the awareness of the threat of money laundering and to make the combat of money laundering more effective it is essential to train all persons involved in this fight, such as:

- personnel in the reporting entities,
- employees in the supervisory bodies,
- police and other financial investigators,
- prosecutors,
- judges.

3. An examination should be made to find out if the use of special investigative techniques and monitoring cross-border cash transactions could be effective tools in the fight against money laundering.

4. When extending the reporting obligations to new professions, consideration should be given to monitoring compliance with the anti-money laundering obligations. This can be conducted by a supervisory body or a professional association.

5. In order to be able to measure the efficiency and effectiveness of the anti-money laundering efforts, it is essential to gather comparable statistical information regarding the results in terms of seized and of confiscated assets and of money laundering convictions.

6. Every country should establish and organise an anti-money laundering system fully compliant with the internationally recognised reference documents to which they are legally capable of acceding, i.e.:

- the 1988 Vienna Convention,
- the 1990 Strasbourg Convention,
- the FATF 40 Recommendations,
- the 1991 EU Directive,

including the creation of FIUs in accordance with the Egmont Group definition.

7. The development of a global network of FIUs should be encouraged, invested with appropriate powers to collect all useful information – while respecting legitimate privacy considerations. Bank secrecy or nontransparent corporate structures should not be a barrier to such information gathering.

8. FIUs should be invested with the widest capacity to cooperate in a substantive way with their counterparts worldwide, irrespective of their form. Consideration should also be given to extending such mutual cooperation to OLAF, where the financial interests of the EU are involved. Neither enhanced secrecy provision nor the fiscal alibi should be invoked to refuse such assistance, particularly where information on the real beneficiary is concerned. Non-cooperative jurisdictions should be met with appropriate countermeasures.

9. The MS should fully and uniformly implement the EU Council Decision of 17 October 2000 concerning arrangements for cooperation between FIUs of the Member States in respect of exchanging information.

10. Cooperation and coordination of law enforcement within the EU might be significantly supported by making Europol a depository of relevant money laundering related information supplied by the Member States.

11. The candidate countries should continue to be assisted to achieve the “acquis communautaire” and the EU standard in respect of an anti-money laundering system. They should be given full assistance, and also be able to give such assistance, at all levels in order to fight money laundering and trace and recover the criminal assets. The same principles should be applied to CEEC countries.

Conclusions

Legal and technical solutions designed for traditional crime control are likely to fail in the area of cybercrime. Legislation needs to address this area in an innovative and forward-looking manner, taking into account all technological and privacy implications.

The investigation and prosecution of cybercrime is too often interpreted as being in conflict with the interest of companies and private citizens.

Cybercrimes are very heterogeneous in character, ranging from attacks against computer systems or data to traditional crimes committed by means of ICT systems, and hence demands a flexible law enforcement strategy.

Cybercrime is not always committed by (international) organised crime. However, the activities of organised crime groups – such as money laundering, child pornography distribution – can to a great extent be facilitated by Information and Communication Technology.

Law enforcement investigative efforts are often hampered by the difficulty to track down historical electronic data necessary for locating and identifying cyber-criminals.

Traditional methods of international law enforcement co-operation are rather limited given the speed with which cybercrime is usually committed.

Any consideration of regulatory efforts should be mindful of the risk of creating “cybercrime havens” in non-regulated jurisdictions.

Recommendations

Major diplomatic and legal effort needs to be invested in the convergence of legislation, regulations, and guidelines that are adopted within different international frameworks, in order to prevent a proliferation of conflicting legislative instruments in the control of cybercrime.

The draft Convention on cybercrime of the Council of Europe should be the basis for harmonising domestic laws and enhancing co-operation at the international level. The incoming Belgian EU Presidency should call for EU Member States to quickly ratify the Convention and the EU should encourage other States (e.g., the EU applicant countries, and the US) to do likewise.

Recognition is needed that cybercrime imposes new demands on the organisational, legislative, and investigatory orientation of law enfor-

cement bodies, notably resources, the principles of territoriality, identity, time, and privacy.

It is necessary to ensure that dedicated units across the EU are available 24/7 with the necessary technical and judicial support.

Means to detecting and preventing cybercrime should include the collection and dissemination of national efforts in “best practice”.

Police, prosecutors and judges should be trained in cybercrime-related law enforcement.

The use of source authentication (i.e., digital signatures, website certificates etc) should be encouraged in the public interest.

All countries should be encouraged to establish the capability to order immediate preservation of specific data held by providers within their jurisdiction. Countries should ensure that these measures do not conflict with other requirements (privacy, data retention). States should authorise under domestic law the capability to rapidly trace the origin and destination of communications (e.g., through multiple providers in a country, using a single order), and in response to an international request.

The relationship between ISP’s and regulators is a crucial one that needs constant effort and an ongoing and intensive dialogue.

The principle of mutual recognition of decisions (Tampere 1999) should be promoted in EU-US law enforcement co-operation concerning cybercrime taking into account maximum standards of (legal) accountability.

New legislation needs to remain technology neutral to avoid creating loopholes or overly specific regulations.

G. VERMEULEN

Rechtshulp en advocatuur

De juridische tweedelijsbijstand

De vorige bijdrage in de rubriek rechtshulp en advocatuur handelde over de juridische eerste-lijsbijstand. In deze bijdrage wordt een overzicht gegeven van de juridische tweedelijsbijstand die door advocaten wordt verleend.

In artikel 508 § 1 2° Ger. W. wordt juridische tweedelijsbijstand omschreven als “de juridische bijstand die wordt verleend aan een natuurlijk persoon in de vorm van een omstandig juridisch advies, bijstand al dan niet in het kader van een procedure of bijstand bij een geding met inbegrip van de vertegenwoordiging in de zin van artikel 728.”