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from:	The Netherlands delegation
to:	Multidisciplinary Group on Organised Crime (MDG)
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Subject:	Analysis Administrative/Non-Penal Instruments in various Member States & Proposal Future Steps

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The Netherlands would like to invite Member States, the Commission and other EU institutions to:

- reflect on the analysis of the Member States' responses to the questionnaire on the administrative approach to organised crime.
- reflect and discuss proposed steps in view of exploring future common actions.

**Introduction**

Organised crime is a large and complex problem, which - by definition - is international in nature. European cooperation is therefore essential in developing adequate measures against this form of behaviour. The increased entanglement between criminal and legitimate interests is a particular cause of concern. Not only are private legal structures used by organised crime, government bodies too are unwittingly facilitating this practice. This threatens the integrity of national and European government bodies. While the fight against organised crime will always contain a repressive component, it is clear that effective tackling of this complex phenomenon requires more than just criminal investigation and prosecution.

The importance of a non-penal approach is recognized throughout Europe. The Justice and Home Affairs Council has confirmed this position in a Council Decision on the development of a strategic concept for combating cross-border crime at European level<sup>1</sup>. Moreover, the ‘Annual Report on the Activities of the European Forum for the Prevention of Organised Crime’ in 2006<sup>2</sup> stresses the need for a combined and cohesive deployment of preventive, administrative and penal measures. In developing a strategic concept on tackling organised crime, the Commission decided that the EU should adopt a holistic approach.<sup>3</sup> The priorities of the European Commission were discussed in July 2009 during the informal meeting of the Justice and Home Affairs Council. One of those priorities was combating the most important threats against the EU, which includes the fight against organised crime (immigrant and drug smuggling, economic crime and paedophilia).

Seen from this perspective, the MDG (Multidisciplinary Group on Organised Crime) should invest not only in direct forms of crime prevention, but also devote attention to administrative and integrated measures against organised crime.<sup>4</sup> This was emphasised by the MDG in its memo ‘Multidisciplinary Group on Organised Crime 1997-2007: looking back and preparing the future’, which recommended special attention for the administrative approach against organised crime. This concerns those measures that government bodies, in particular local governments, as opposed to law enforcement agencies, can take in preventing or combating organised crime.

Various other Member States share the previously described concern, as clearly reflected by the outcome of a seminar on this subject held in the Netherlands in March 2008. The seminar illustrated that various Member States are using a range of measures to supplement the actions available under penal law. Examples include the refusal or withdrawal of permits, the refusal or withdrawal of grants, the exclusion from tendering processes, the levying of taxes or the closing down of buildings. These measures differ from one Member State to the next in terms of denomination, nature and manner of application. In view of the cross-border character of organised crime, a need was expressed for further study into the nature and scale of these measures as well as the level of agreement between them.

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<sup>1</sup> Brussels, December 2, 2004, 13463/2/04, 14125/2/04.

<sup>2</sup> Brussels, June 5, 2007, 10313/07.

<sup>3</sup> The Vienna Action Plan on Organised Crime (Official Journal C 019, 23/01/1999 p. 1-15) The Hague Programme adopted at the European Union Council on 20 December 2004, 14292/2/04 REV 2, PB C 53 or 3.3.2005. The development of a strategic concept for combating organised crime, Brussels, 2.6.2005, COM (2005) 232.

<sup>4</sup> Brussels, July 13, 2007, 10554/07.

During the MDG of December 2008, initiative was taken to acquire insight into the non-penal approach by various Member States. It was agreed that the Netherlands would draw up a questionnaire on this matter. The questions raised concern the non-penal tackling of organised crime, the actors involved and their responsibilities, information exchange, and the approach and cooperation at European level. The questionnaire and the responses to it have resulted in this document, which offers insight into the existing instruments within the various Member States that have responded<sup>1</sup>. This analysis can be instrumental in exchanging 'good practices' and identifying (shared) bottlenecks of an integrated approach to organised crime. Also, it can serve as a foundation for further study into the possibilities for an approach and cooperation at EU level.

The document consists of four sections, the contents of which were drawn exclusively from the submitted answers to the questionnaire. Section A describes the non-penal approach in the various Member States. Section B deals with the actors involved, the local administration, cooperation and information exchange. Section C handles experiences, best practices and possible bottlenecks. Section D looks at the approach at European level. This is followed by conclusions and a description of possible follow-up steps within the framework of cooperation at EU level.

## **A. Non-penal approach**

In order to inventory the non-penal measures taken by Member States in fighting organised crime, respondents were asked to specify the relevant supplementary administrative and fiscal measures taken in their country. Various measures were named, such as the exchange of information, the provision of permits, but also screening and extra monitoring. This section further describes this information and seeks to give an overview of the implemented non-penal measures in Europe.

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<sup>1</sup> Member States that completed the questionnaire are: France, the United Kingdom, Cyprus, Lithuania, Slovakia, Rumania, Greece, Belgium, Latvia, Poland, Estonia, Finland, Germany, Slovenia, Italy, Bulgaria, the Netherlands, Ireland and Spain.

## **Non-penal measures**

Besides penal measures, all Member States apply certain supplementary measures aimed at combating organised crime. Many Member States, such as Germany, the Netherlands, Lithuania and Slovakia classify these measures as administrative or fiscal. Other Member States, such as France and Poland, do not apply any classification. Finland labels the non-penal approach as the ‘crime prevention approach’ and the United Kingdom calls it the non-traditional method. In Italy it falls under the heading of ‘overall law enforcement strategy’.

All Member States can count on sufficient backing for a non-penal approach as a supplement to the penal strategy, with general acknowledgement of the importance of preventive measures. Good cooperation between the various authorities and cooperation with other sectors, such as the private sector and the civil society, are regarded as important. Differences exist, however, in the nature of measures. Not all Member States have an administrative approach that is legally embedded. Often, the implemented administrative measures do not have the primary goal of combating organised crime, but nevertheless do contribute to this purpose. Timing of these measures depends on specific circumstances. The various administrative and fiscal measures can be subdivided into a number of categories, which are briefly discussed below.

### *Information exchange*

Information exchange between, on the one hand, various administrative bodies, and on the other between administrative and private parties, is an important instrument in the non-penal approach. Various options are available in this area.

In France, inspection of police files is permitted before administrative decisions are taken on certain occupations. Additionally, relevant data and alerts are registered. The Polish Ministry of Economic Affairs may collect certain information about persons via the Internet and keep registers containing specific information. In the United Kingdom, efforts are made to match data and information from the public and private sector with information from police files and database records on persons involved in organised crime<sup>1</sup>. In Ireland, the Garda Síochána (Irish Police Force) plays a role in exchanging information. The Netherlands has regional information & expertise centres within which partners, including government bodies, police, the public prosecutor's office and the tax authorities can, on the basis of a covenant, share and exchange information required for an administrative or fiscal approach. Information exchange is also an important instrument for strengthening and facilitating cooperation between the various actors involved.

Section B will take a closer look at the exchange of specific information between the actors involved in the Member States.

#### *The refusal or withdrawal of permits*

Most Member States regard the refusal or withdrawal of permits as an important instrument. A number of countries, such as Lithuania, Slovakia, Bulgaria and Germany, apply this instrument to weapon possession and arms trade, but can also withdraw the residence permits of criminals. The United Kingdom refers to the (permanent) withdrawal of driving licences and the pilot's license of pilots suspected of drugs trafficking. In Germany, the refusal or withdrawal of permits is also applied as an instrument within the hospitality industry. In Italy, companies that wish to conclude a contract with public organisations or require a permit or grant must be in possession of an anti-mafia certificate.

Municipalities in the Netherlands can, on grounds of the Public Administration (Probity in Decision-making) Act ('BIBOB'), withdraw permits from fraudulent businesses or refuse applications.

In Ireland, the Garda Síochána (Irish Police Force) has a role in the granting or refusal of certain permits, such as for bookmakers (gambling), taxi drivers, publicans, etc., where there are good grounds for objections in the appropriate forum. This would be primarily regarded as a criminal justice approach in Ireland.

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<sup>1</sup> United Kingdom (2009). *Extending Our Reach: A comprehensive approach to tackling serious organised crime.*

### *Screening and certificate of good character*

Occupational disqualification is possible in certain industries. France and the Netherlands allow inspection of police files for screening purposes. In Poland and Finland, a certificate of good character may be a requirement for issuing a permit for specific professions or activities.

Additionally, strict mechanisms apply to government organisations and people in high-risk companies. Other countries too are taking measures to prevent criminals from entering legal organisations. In Cyprus, for example, fraudulent persons are excluded from management positions within companies, while candidates who have been convicted of corruption, fraud or money laundering are excluded from participation in a public agreement or commitment. In the United Kingdom, directors of organisations can be dismissed.

### *Monitoring and control*

Monitoring and control are among the instruments used, often in combating economic crime and money laundering.

Measures against drug crime in Poland include extra administrative monitoring and control by specialised governing bodies on various company activities and drug areas. Many Member States apply the monitoring of payment transactions, while the tax authorities perform targeted audits. Those countries also maintain a duty of obligation for unusual and/or suspect transactions. In Italy, transactions above 5,000 euro must be reported by banks and insurance companies to the director of the head office, and in some cases to the Financial Intelligence Unit of the Bank of Italy, which in turn can bring it to the attention of the Anti-Mafia Investigation Directorate and the Finance Guard. The 'Belgian Financial Intelligence Processing Unit' is, for example, responsible for analysing suspect transactions by professionals and institutes. Any suspicion of money laundering or the financing of terrorism is reported to the public prosecutor's office. In Germany, special monitoring applies to (potential) criminals, while economic enterprises are subject to structural control, also on the basis of a voluntary monitoring agreement. Joint action, for example, in the form of police raids in cooperation with tax inspectors, also takes place. Finally, other monitoring and control measures reported by Member States include penalising and the seizure of funds and other property acquired by criminal means.

## *Integrity*

The integrity of the government is an important aspect of the administrative measures against organised crime. Respondents in Belgium are of the opinion that an administrative approach is impossible without government integrity. Romania has established the ‘National Integrity Agency’ as an independent authority charged with monitoring integrity. In the Netherlands, public administration applies the Public Administration (Probity in Decision-making) Act as an instrument to prevent the government from unwittingly facilitating illegal, criminal activities.

### **Ad-hoc and structural measures**

The aforementioned measures are generally of a structural nature, as with the duty of disclosure of unusual transactions, for example. However, Member States also apply ad-hoc measures depending on the situation, for example, by having the tax authorities carry out targeted audits. Besides structural, the applied measures are often universal, whereby no distinction is made between the various forms of organised crime. A few Member States, such as Germany, Finland and the United Kingdom, adapt measures according to the type of crime, as certain measures may be more successful than others in combating specific forms of crime. Germany also bases its choice of participating organisations and private partners on the type of crime under focus.

### **Legislation and regulations**

Most Member States have not laid down the non-penal approach in specific laws and regulations. Some Member States, such as Poland, Estonia, Bulgaria and the United Kingdom refer to legislation in the field of drugs or immigration, but also to laws in the area of ‘Public Procurement’. In Germany, the United Kingdom, Spain and the Netherlands, the non-penal approach is embedded in various laws and regulations in the area of trade, hospitality, environment and specific legislation that concerns money laundering and policing. Spain has also invoked legislation in the area of electronic traffic storage (or withholding data). In 2006/2007, Slovenia adopted two resolutions that enable a multidisciplinary approach towards combating organised crime; a resolution concerning the prevention and suppression of organised crime and a resolution regarding a national programme in this field. Italy has legislation to counter mafia organisations and money laundering.

## **Legal entities**

Most Member States (Poland, Estonia, Finland, Germany, France, the United Kingdom, Lithuania, Slovakia, Italy and the Netherlands) state the possibility of legal structures that can be used for money laundering, tax evasion, fraud, illegal trade and the financing of terrorism. Most countries apply a duty of disclosure and involvement of the financial authorities in fighting this form of organised crime.

## **Relationship between penal and non-penal approach**

Respondents find it difficult to estimate how much the non-penal approach accounts for in terms of the total anti-crime measures applied in their country. Estimates made by the Member States indicate that penal measures account for by far the larger share - 90 to 95% - of their total efforts. Several respondents, such as the United Kingdom, state a growing awareness of the importance of non-penal measures.

## **Sub conclusion A**

Various Member States, such as Germany, the United Kingdom, Belgium, Finland, the Netherlands, Italy and France, are increasingly applying non-penal measures and are investing in the development of an administrative, preventive and fiscal approach. Member States can count on strong support for a non-penal approach and signal a growing awareness of the need for supplementary measures.

Member States deploy various non-penal measures. These measures are part of an integral approach, based on intensive cooperation and the exchange of information between administrative bodies and other institutes. The applied instruments are extra monitoring and control, screening, information exchange, policy with regard to the granting and withdrawal of permits, and measures aimed at guaranteeing government integrity. These measures, which are applied by various Member States, offer a good basis for the further development of a European, integral approach.



Member States signal various bottlenecks that require a more forceful non-penal approach. Various Member States experience problems with legal entities that could play a major role in organised crime. This entanglement between the underworld and legitimate sectors endangers the integrity of government, and makes it increasingly necessary to lay down a non-penal approach in laws and regulations. The aforementioned measures, together with the bottlenecks experienced by the Member States, form a valid point of departure for further joint actions aimed at expanding the non-penal approach throughout Europe.

## **B. Actors, local government, cooperation and information exchange**

Besides looking at the various administrative and fiscal measures taken by Member States, an inventory was made of the various actors involved in this approach, as well as their operational responsibility. Furthermore, Member States have outlined the role fulfilled by local government within the non-penal approach, the regulations and protocols on which this role is based, and what arrangements apply in terms of information exchange. This section provides a summary of the various actors, regulations and protocols that apply in this area.

### **Actors**

Various actors are involved in the non-penal approach to organised crime. A number of Member States, such as Slovakia and Slovenia, only make mention of the involvement of government bodies at national, regional and local level. The involvement of ministries is often referred to; this primarily concerns the ministries of the Interior, Justice, Finance, Economic Affairs, Social Affairs, Public Health and Culture.

Germany, Greece and Poland specify many different actors, both among government bodies and the business community. Greece, Poland, Germany, the United Kingdom, Bulgaria, the Netherlands, Italy, Spain and Lithuania state the involvement of the tax authorities, financial institutions and banks in the non-penal approach. The Customs Service is an important actor in Germany, France, the Netherlands and Finland. Greece and Spain specifically refer to the involvement of notaries, lawyers, estate agents and property owners. In this regard, Spain is obliged to notify any suspected transfers to Spanish FIU related with money laundering. Involvement by the police is cited by Greece, Finland, France, the United Kingdom, Bulgaria, Ireland, Spain and Lithuania. Some countries also state the involvement of private security firms. In Poland, Italy and Finland, the civil society and citizens also play an important role in the non-penal approach. Italy highlights the role of specific religious institutions. Reference is also made to actors such as insurance companies, NGOs, penitentiaries and various, specialised institutes, such as the Financial Markets Authority in France and the National Fraud Authority in the United Kingdom.

Alongside the aforementioned public and private actors, several countries have founded specific organisations or specialised bodies dedicated to combating organised crime, and have adopted new laws and regulations. Rumania has established the Unit for Coordination and Verification of Public Procurement. Countries such as Poland, Belgium and Greece have created specialised units that are charged with fighting human trafficking, money laundering and terrorism. As stated in the report 'Extending Our Reach' (2009), the United Kingdom is setting up a new strategic centre for the fight against organised crime, both at strategic and operational level. Italy has the Anti-mafia Parliamentary Commission, which monitors Mafia activity and supports legal action in this field. Spain has founded the Anti Money Laundering Committee, which seats representatives of the various bodies involved in the fight against money laundering, such as the tax authorities, the Guardia Civil and the National Police Force.

### **Responsibility of different Actors**

Some Member States, such as Germany, note that the responsibilities of actors depend on their instruction and the specific laws and regulations. The stated tasks and responsibilities of the actors extend to strengthening the feeling of safety, collecting, analysing and exchanging information, checking personal details, performance of administrative studies, cooperation and functioning within the legal framework. Ministries have a coordinating and supporting role in relation to local government. Member States that list citizens and the civil society as specific actors also highlight responsibilities in this area, such as participating in a safer society, crime prevention and the reporting of irregularities and suspicions. Estonia speaks of 'community-centred prevention'. In Spain, the actors involved have punitive and administrative responsibilities.

### **Role of local government**

Local government plays an important role in various Member States. France and the United Kingdom devote attention to the role of local government in the issue of permits. Many countries pursue crime prevention activities at local level. Local government in Bulgaria plays an important role in the prevention and combating of human trafficking. In Finland, local government has a role in mobilising key figures from the business community and civil society. Germany has difficulty characterising the role of local government, as it depends on the specific situation and the existing

laws and regulations. Local government in Italy plays a role in projects on culture or legality by organising meetings, conferences and training modules. In Belgium, non-penal measures are an important instrument in handling cases of public disorder within municipalities. As a result, local authorities have gained more autonomy in their police attributions, less serious offences (public disorder) were no longer penalized criminally, perpetrators of such offences did not escape punishment and the workload of courts and tribunals was relieved. In Ireland, it is possible to establish a joint policing committee in each local authority administrative area as part of the local government structures. Also, a local authority shall, in performing its functions, have regard to the importance of taking steps to prevent crime, disorder and anti-social behaviour within its area of responsibility. Local government plays no role in Spain, as the fight against money laundering is regarded as a matter that can only be organised at national level. However, there is compulsory cooperation between national and local governments to tackle the corruption in this field including local law enforcement and local civil servants (for instance, Catalonia Region authorities have developed an anticorruption agency).

Two examples of the role assumed by local government in Greece and the Netherlands are given below.

Examples:

- In Greece, municipalities with over 3,000 citizens have a ‘Crime Prevention Council’, in which civil servants, police officials and scientists have a seat. These councils are united under an umbrella organisation.
- By means of the Emergo project, local government in Amsterdam, the Netherlands, is adopting an area-oriented approach in order to tackle crime in the Wallen district. Through intense cooperation with the police, tax authorities, public prosecutor's office and scientists, local government is trying to regain control over the Wallen district.

## **Cooperation between actors**

Member States agree that cooperation between actors is an important ingredient in the non-penal approach. In most Member States, this cooperation is not based on specific regulations or cooperation protocols. A number of countries, such as Greece and Poland, report that cooperation is based on legislation, national policy (e.g., drugs policy, anticorruption policy and security policy) and/or action plans. Lithuania states a number of protocols in the field of police cooperation. Alongside national cooperation, Greece is also trying to strengthen international cooperation by forming new alliances. The country also adopts an active approach to personnel training.

Besides protocols aimed at further stimulating cooperation between actors, more and more services and organisations are being founded with the specific task of facilitating this cooperation. In France, for example, central interministerial services have been set up to prevent organised crime, with a specific focus on legal entities that maintain close ties with the underworld. The Netherlands adopts both an area-oriented and sector-oriented approach in which cooperation is facilitated between all actors involved, such as the police, public prosecutor's office, municipality and the tax authorities. The Belgian Ministry of the Interior has recently initiated a project to strengthen the administrative approach, in particular as regards cooperation between the various bodies involved.

## **Public-private partnership**

Public-private partnership is a specific form of cooperation that can make a substantial contribution to the fight against organised crime. In several Member States, cooperation agreements have been concluded between the government and business community. In Germany and the Netherlands, the police and business community have entered into agreements with one another on subjects such as crime against property, and preventive safety agreements are concluded with specific groups. The national Rumanian authority for combating money laundering has entered into cooperation agreements with several private bodies, such as banks and pension insurance companies. In Belgium, public-private partnership is applied to parking facilities that are protected by private security companies. In the Netherlands, public-private partnership is also used in the transport sector to prevent load theft, while cooperation with banks is essential in fighting financial-economic crime.

## **Information exchange**

In the non-penal approach, which hinges on cooperation between the actors, it is vital that sufficient facilities are available for the exchange of information. Most Member States refer to information exchange between ministries, government bodies and local governments. A number of Member States mention information exchange with and among the police. Finland reports information exchange between all the actors that cooperate within the framework of the 'Internal Security Program'. Germany too states information exchange, either on a structural or ad-hoc basis, between all actors involved. Rooted in a covenant, police, municipalities, tax authorities and the public prosecutor's office in the Netherlands exchange information within the Regional Information & Expertise centres. In Ireland, the work of the Criminal Assets Bureau is facilitated through the Disclosure of Certain Information for Taxation and Other Purposes Act 1996 that allows for the exchange of information between the Revenue Commissioners, the Garda Síochána (Irish Police Force) and other relevant persons in relation to the identification of criminal assets. In Spain, information exchange takes place between banks, the financial intelligence service, the national committee for the securities market and the directorate-general for the insurance market.

Member States were asked about the type of information exchanged by actors. Latvia and France note the exchange of penal information. France makes specific mention of information provided by intelligence services and databases with reported offences. Poland states the sharing of specific information on drugs (nature, scale, etc.) and behavioural factors involved in crime (alcohol, mental illness) and measures aimed at preventing such behaviour. Actors in Rumania exchange information, such as income data, on natural and legal entities. Information exchange on human trafficking takes place in Slovenia. Bulgaria reports information exchange on illegal possession. Penal, administrative and fiscal information is exchanged in the Netherlands.

Several countries indicate the absence of a statutory basis for the exchange of administrative information. As a result, it is not always possible for the actors involved to acquire all relevant information. Exchange of information with other countries is often even more complicated. In Poland, Finland and Slovenia, information exchange is based on policy and/or cooperation agreements. A number of Member States allow information exchange, without indicating the basis on which this takes place. Germany, the United Kingdom and France have a legal basis for the exchange of information regarding crime prevention.

## **Sub conclusion B**

Member States have actors with diverse responsibilities who are involved in the non-penal approach to organised crime. Member States are clearly working towards an integral approach, whereby cooperation with a range of actors is necessary. Local government, in particular, can play an important role in various aspects of the non-penal approach.

Member States try to facilitate integral cooperation by means of statutory regulations and protocols. The purpose of these protocols is to advance cooperation between government, police and the business community. Public-private partnerships are gradually being expanded. There is a clear need for more intense cooperation between the actors involved. There are plenty of possibilities for the further strengthening of administrative and public-private cooperation.

While information exchange is universally recognized as an important instrument in combating organised crime, several countries lack a statutory basis for this practice. Such facilities are still limited in particular for organisations other than government and police, as well as for exchange at international level. More comprehensive exchange of data and information is, however, essential to a successful non-penal approach, and forms the basis for intensified cooperation.

## **C. Experiences, best practices and bottlenecks**

Besides an overview of the various measures taken by Member States and a description of the actors, regulations and alliances, respondents also described the experiences that they have gathered with the non-penal approach. Some Member States also describe a number of best practices that they want to share with other countries. In the questionnaire, Member States were asked to specify their bottlenecks and the possible solutions that they have developed in response. These experiences, best practices and bottlenecks will be described in the section below.

## **Experiences**

The number of Member States that use non-penal measures is growing steadily and has now reached the point at which the first experiences are being gained and exchanged. Based on own experience, Estonia reports that the preventive approach is only feasible as part of a coordinated and long-term strategy, in which local authorities, companies and social organisations are jointly involved. An optimal mix of the various measures is essential, according to Estonia. Germany has gained positive experiences with the non-penal approach, especially in preventing extortion, human trafficking, money laundering, etc. Good cooperation between various organisations has proven especially useful in bringing pressure to bear on criminal organisations.

Several other countries, such as France, Italy and the United Kingdom, describe individual non-penal measures that have yielded good results. The Netherlands reports good experiences with an area-oriented approach and industry-targeted projects in the field of human trafficking, real estate fraud and money-laundering. Member States who have only recently adopted the non-penal approach also acknowledge the value of this strategy. Finland stresses that the purpose of its non-penal measures is not to combat organised crime, but that it is a welcome side-effect.

## **Best practices**

Besides the aforementioned experiences, several Member States, such as Germany, France, the Netherlands, the United Kingdom, Italy and Rumania, have also described best practices. A number of examples are given below.

Examples:

- Germany has involved Italian restaurant holders in a police project against the mafia, named ‘Mafia? No thanks!’ This project had a preventive effect and resulted in the apprehension of a mafia organisation involved in extorting the restaurant holders.
- The United Kingdom is developing a strategy aimed at tackling organised crime in prisons and to create an environment in which the use of mobile phones and drugs is frustrated.
- An Irish Garda Síochána may have a role in the granting or refusal of certain permits, such as to bookmakers (gambling), taxi drivers, publicans, etc, where there are good grounds for objections in the appropriate forum. This would be primarily regarded as a criminal justice approach in Ireland.

- Organisations in Spain charged with taking preventative measures against money laundering have distributed the so-called Catalogues of Suspect Transactions among those persons who, by law, are obliged to take note of such. These catalogues are lists that intend to raise the awareness of persons involved of transactions that may somehow be related to money laundering practices.

### **Bottlenecks and solutions**

Although the experiences gained with the non-penal approach to organised crime are positive, Member States nevertheless experience various bottlenecks, such as the absence of a statutory basis for the non-penal approach, problems with the validity of documentary evidence and difficulty in reaching agreement on the basis of available information (Belgium, France, United Kingdom). Moreover, Finland notes that the priorities of a preventive approach can be in conflict with other priorities or at odds with other policy (privacy, security). Finland and Germany report problems in terms of motivation due to the fact that the effects of the measures are difficult to measure and not immediately visible. Finland, the United Kingdom and Germany also draw attention to the high costs involved in the measures, their time-consuming nature and the required effort in terms of coordination and flexibility. Poland, Finland and Germany emphasise the need to develop awareness within the government and to stimulate the recognition of suspect activities and threats, by means of training programmes, for example. Although the implementation of measures can be troublesome, Finland explicitly reports not to experience any bottlenecks in terms of implementing measures and realising cooperation between the various government bodies. Despite the legal obligation to do so, Italy says that not all suspect transactions are reported.

Some Member States, such as the Netherlands and Belgium, report bottlenecks in the field of international cooperation. There are as yet limited possibilities for the international exchange, for administrative purposes, of penal information on suspects, for example. A targeted strategy is thus hindered, allowing criminal activity to go unpunished. France experiences this problem in the arts sector, where it is proving difficult to tackle the illegal international trade in art. Problems of this nature require a European approach, but the required structure is not yet in place.



According to Germany, possible solutions to these problems lie in frequent personal contact with external and internal organisations, and the organising of training programmes, work visits and conferences. Lithuania has founded a new national programme, including legislation, to crack down on organised crime.

### **Sub conclusion C**

Member States have as yet gained positive experiences with the non-penal approach and are committed to expanding this strategy. Several Member States have described best practices and are eager to share these with other countries.

Although the experiences to date are positive, respondents also signal bottlenecks and shortcomings that require solutions. The absence of a legal basis for the non-penal approach is one such obstacle. As a result, sufficient time and resources are not always available to apply the non-penal approach, meaning that other priorities are given precedence. Additionally, Member States signal that as non-penal measures do not yield any direct result, certain government bodies are less eager to give their full backing to measures of this kind.

Cooperation between actors makes high demands in terms of coordination and flexibility, resources that are not always readily available. International cooperation and information exchange for administrative purposes only play a limited role at present, resulting in lost opportunities.

To resolve these bottlenecks, it is important to increase awareness of the importance of the non-penal approach. By sharing experiences and best practices, Member States can help one another in finding solutions to bottlenecks. Europe also has an important role to play in this respect.

### **D. Approach at European level**

Member States were asked to put forward a point of departure for European cooperation and to state their needs in terms of the exchange and sharing of information. Additionally, respondents were asked for suggestions on how to strengthen the European cooperation and to define the role that the European Commission should play in this process. This section looks at the approach at European level.

## **Possible points of departure for European cooperation**

Member States see points of departure for European cooperation in developing a non-penal approach. Most cited were the exchange (and consolidation) of information and the sharing of (administrative) experiences and best practices, in particular the exchange of financial information and personal details within the context of anti-terrorism measures. France stresses the need for technology advancement in information exchange between existing databases to counter the trade in stolen cultural assets. Several countries offer public access via the Internet to databases on stolen cultural assets, a facility that France would like to see expanded within Europe. This form of information exchange may possibly also prove successful in combating other forms of organised crime.

Germany pleads for the international availability of penal and non-penal information, with the most relevant information being collected and consolidated at European level. Ireland emphasizes that information sharing at EU-level will also require careful examination at a working group level.

Member States express the need for sharing (administrative) experiences and good practices in the area, for example, of protecting private sectors against the threat of organised crime as well as information on drugs addiction and drugs trade. By analysing and evaluating best practices, the non-penal approach to organised crime can be promoted.

Finland not only wants to exchange best practices, but also facilitate the promotion of pilots and crime prevention projects. Poland places particular emphasis on preventive initiatives and activities, such as the preventive approach to drugs by HDG and Europol, which may serve as a point of departure for combating other aspects of organised crime. Poland is positive about the potential of European cooperation between specialised bodies and the monitoring of organised crime within a European context.

Examples:

- The United Kingdom cites a number of examples of cooperation with two or three other EU countries in tackling individual cases, for example, cooperation with Norway in arresting human traffickers, and cooperation with Spain in apprehending persons engaged in drugs trade, money laundering and human trafficking.

- The Netherlands, Germany and Belgium have initiated a joint trial in the Meuse/Rhine Euregio by setting up a Euregional information & expertise centre, which plays a coordinating role in implementing a cross-border administrative approach to crime. The Euregional information & expertise centre can promote cross-border information exchange and thus prevent displacement effects. Main purpose of this trial is to counter cross-border drugs crime and large-scale hemp cultivation.

Finally, the EU can assist those Members States that have gained less experience with the non-penal approach by informing them of the various options and stressing the achievements realised through alternative measures.

### **Strengthening EU cooperation**

By answering the questionnaire, Member States have made various proposals aimed at strengthening European cooperation in adopting a non-penal approach. France stresses the need to first agree on the definition and scope of the non-penal approach towards organised crime before taking steps towards joint European measures. Other Member States again draw attention to the frequent exchange of best practices and the establishment of evaluation criteria to gauge the effectiveness and innovative nature of administrative measures. Poland pleads for the promotion of effective international cooperation instruments, the establishment of cooperation platforms and informal expert networks, and the organisation of expert meetings to discuss the protection of specific market sectors against the threat of organised crime. Slovenia advocates a role for Europol, Eurojust and Cefpol (for the organisation of seminars). Spain highlights the need to formulate protocols for the exchange of information between financial intelligence services. Finland and Slovenia draw attention to the potential of strengthening European cooperation within the European Crime Prevention Network (EUCPN). The Netherlands and Belgium point to the absence of an appropriate platform for the discussion of new initiatives in the administrative approach to organised crime. A need exists for an informal working group, in which more attention is devoted to the administrative approach to organised crime, preferably as part of the MDG or EUCPN.

## **Role of the European Commission**

Besides strengthening European cooperation, most Member States also wish to assign a role to the European Commission in further advancing the non-penal approach. A number of Member States note that the European Commission should promote the exchange of information and experiences, while further stimulating awareness in this area, for example, by organising seminars and conferences, and commissioning targeted studies. Several Member States have expressed the need for a guide of best practices, which could be published by the European Commission, setting out the various measures available for combating organised crime. Member States also feel that the Commission has a role to play in supporting and financing various projects, for example, in the area of public-private partnerships or crime prevention pilots. France recommends the establishment of various working groups dealing with these issues, and requests that the European Commission make proposals for a communal strategy. The establishment of working groups could serve as a basis for realising proposals made by other Member States.

## **Sub conclusion D**

Member States welcome more intensive cooperation and see various starting points for European cooperation in advancing the non-penal approach. Most cited were the exchange (and consolidation) of information and the sharing of (administrative) experiences and best practices. Member States request a guide in which the best practices of the various countries are published. Many Member States would like to see a strengthening of cooperation between specialised agencies.

Member States present various proposals aimed at strengthening European cooperation, including in the field of information exchange, best practices and cooperation between individual Member States. At present, however, there is no platform to which countries can address such proposals and requests. Certain Member States wish access to an informal working group that devotes attention to the administrative approach to organised crime. Such an informal working group could be accommodated within the MDG or EUCPN, for example.

Most Member States would like to see the European Commission assume an important role, for example, in promoting the exchange of information and experiences, and stimulating awareness by organising seminars and conferences, as well as the performance of studies, the financing and establishment of working groups.

## **Conclusions**

This composite paper has been drawn up on the basis of answers provided by Member States to the questionnaire. The most important conclusions per section are set out below.

### **Non-penal approach**

Member States, such as Germany, the United Kingdom, Belgium, Finland, the Netherlands, Italy and France, are increasingly applying non-penal measures and are investing in the development of an administrative, preventive and fiscal approach. Member States can count on strong support for a non-penal approach and signal a growing awareness of the need for supplementary measures.

Member States deploy various non-penal measures. These measures form part of an integral approach, based on intensive cooperation and exchange of information between administrative bodies and other institutes. The applied instruments are extra monitoring and control, screening, information exchange, policy with regard to granting and withdrawal of permits, and measures aimed at guaranteeing government integrity. These measures, which are applied by various Member States, offer a good basis for the further development of a European, integral approach.

Member States signal a number of bottlenecks that require a more forceful non-penal approach. Various Member States experience problems with legal entities that could play a major role in organised crime. This entanglement between the underworld and legitimate sectors endangers the integrity of government, and makes it increasingly necessary to lay down a non-penal approach in laws and regulations. The aforementioned measures, together with the bottlenecks experienced by the Member States, form a valid point of departure for further joint actions aimed at expanding the non-penal approach throughout Europe.

### **Actors, local government, cooperation and information exchange**

Member States have actors with diverse responsibilities who are involved in the non-penal approach to organised crime. Member States are clearly working towards an integral approach, whereby cooperation with a range of actors is necessary. Local government, in particular, can play an important role in various aspects of the non-penal approach.

Member States try to facilitate integral cooperation by means of statutory regulations and protocols. The purpose of these protocols is to advance cooperation between government, the police and the business community. Public-private partnerships are gradually being expanded. There is a clear need for more intense cooperation between the actors involved. There are plenty of possibilities for further intensification of administrative and public-private cooperation.

While information exchange is universally recognized as an important instrument in combating organised crime, several countries lack a statutory basis for this practice. Such facilities are still limited in particular for organisations other than government and police, as well as for exchange at international level. Comprehensive exchange of data and information is, however, essential to a successful non-penal approach, and forms the basis for intensified cooperation.

### **Experiences, best practices and possible bottlenecks**

Member States have as yet gained positive experiences with the non-penal approach and are committed to expanding this strategy. Several Member States have described best practices and are eager to share these with other countries.

Although the experiences to date are positive, respondents also signal bottlenecks and shortcomings that require solutions. The absence of a legal basis for the non-penal approach is one such obstacle. As a result, sufficient time and resources are not always available to apply the non-penal approach, meaning that other priorities are given precedence. Additionally, Member States signal that as non-penal measures do not yield any direct result, certain government bodies are less eager to give their full backing to measures of this kind.

Cooperation between actors makes high demands in terms of coordination and flexibility, resources that are not always readily available. International cooperation and information exchange for administrative purposes only play a limited role at present, resulting in lost opportunities.

To resolve these bottlenecks, it is important to increase awareness of the importance of the non-penal approach. By sharing experiences and best practices, Member States can help one another in finding solutions to bottlenecks. The EU also has an important role to play in this respect.

### **Approach at European level**

Member States welcome more intensive cooperation and see various starting points for European cooperation in advancing the non-penal approach. Most cited were the exchange (and consolidation) of information and the sharing of (administrative) experiences and best practices. Member States request a guide in which the best practices of the various countries are published. Many Member States would like to see a strengthening of cooperation between specialised agencies.

Member States present various proposals aimed at strengthening European cooperation, including in the field of information exchange, best practices and cooperation between individual Member States. Certain Member States wish access to an informal working group that devotes attention to the administrative approach to organised crime. Such an informal working group could be accommodated within the MDG or EUCPN, for example.

Most Member States would like to see the European Commission assume an important role, for example, in promoting the exchange of information and experiences, and stimulating awareness by organising seminars and conferences, as well as the performance of studies, the financing and establishment of working groups.

### **Proposal by the Netherlands: Follow-up steps within the framework of cooperation at EU level.**

Taking the previously described analysis fully into account and to help advance the discussion further at EU level, the Netherlands proposes follow-up steps within the framework of EU cooperation. These are described in the following paragraphs. The Netherlands would like to invite Member States, the Commission and other EU institutions to reflect on these steps and discuss them in view of exploring future common actions.

## **Starting points for cooperation**

Despite the differences in how Member States give content to their non-penal approach to organised crime, this inventory justifies the conclusion that the respondents recognize the importance of international cooperation and an integrated, administrative approach. Member States express the wish to share information, experiences and best practices at international level, as well as to cooperate in rolling out the administrative approach to organised crime. The various non-penal measures applied by various Member States offer a good basis for the further development of a European, integral approach. Besides the ambitions and intentions shared by Member States, the signalled bottlenecks and needs also provide opportunities for further European action. Plenty of room is available for the development of new initiatives and proposals for new, non-penal measures at European level.

## **Needs**

This document reflects a concrete need by Member States for more intensive international cooperation, the exchange (and consolidation) of information and the exchange of experiences and best practices. To stimulate this cooperation and acquire the required attention at national and European level continuous propagation of the value and necessity of an integral non-penal / administrative approach, which includes public-private partnerships and government organisations at different levels, is needed. Problems experienced by Member States with legal entities and the absence of a legal framework for the deployment of non-penal measures at a national and international level also deserve attention. Respondents also want a platform in which to focus attention on the administrative approach of organised crime. Taking the actions below will serve to meet the aforementioned needs.

## **Actions**

1. The European Commission is requested to take the need of facilitating international cooperation on an integrated, non-penal administrative approach into account when developing future policy and legal measures.
2. Member States should be able to address a designated platform new proposals and initiatives with regard to the administrative approach to organised crime. Establishing an informal working group (including the European Commission, the Council Secretariat and Europol) within the MDG or EUCPN could meet this requirement.



3. In order to meet the needs of Member States in the field of information exchange, steps must be taken to exchange more non-penal information at European level. Administrative data concerning administrative actions aimed at combating crime must also be included in the exchange process. Particular importance should be given to the sharing and exchange of specific information relating to concrete measures.

4. Besides information exchange, Member States are also keen to share best practices. To realise this, a guide of best practices contributed by Member States should be compiled by the previously mentioned informal working group and distributed among all EU Member States.

5. The measures and priorities within the Justice and Home Affairs Council should not be limited to penal ones, but adopt a broader orientation. OCTA must therefore provide added attention to this phenomenon, as it serves as input for prioritization. In concrete terms, the OCTA should devote detailed attention to the entanglement of the criminal and noncriminal sectors, providing further insight into bottlenecks in this area. Subsequently, the Justice and Home Affairs Council should develop a broad-based administrative strategy.

6. The administrative approach to organised crime demands constant attention. Including the non-penal approach in the Stockholm programme and the accompanying implementation programme could contribute to this end.

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**Member States that participated in the questionnaire.**

1. France
  2. United Kingdom
  3. Cyprus
  4. Lithuania
  5. Slovakia
  6. Romania
  7. Greece
  8. Belgium
  9. Latvia
  10. Poland
  11. Estonia
  12. Finland
  13. Germany
  14. Slovenia
  15. Italy
  16. Bulgaria
  17. Netherlands
  18. Spain
  19. Ireland
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