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An examination of the links between organised crime and corruption

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1. INTRODUCTION

Day after day, throughout the Member States, the activities of organised crime, such as the illegal drugs trade, smuggling of high value goods, trafficking in human beings, are highlighted in the media. Few states have escaped the corrosive impact of corruption **scandals** at senior political and business levels, while there are also instances of corruption within their law enforcement systems. It is estimated that the **costs** of corruption represent up to 5% of the world's economy¹ which according to the **World Bank** represents more than 1.5 trillion U.S. dollars.² In the United Kingdom, the social and economic costs of organised crime run to £20bn annually³. Yet little **research** has been done on the links between these phenomena, not to mention their financial impact on states or globally. Many sources simply assert that organised crime uses corruption, without any accompanying support or analysis of empirical evidence.

Reflecting this situation, legislation and policy developments have also focused separately on the phenomena of organised crime and of corruption, without identifying and addressing the dynamics of the links between them. The **Hague Programme**⁴ called for an examination of the links between organised crime (OC) and corruption, in connection with the development of the strategic concept with regard to tackling cross-border organised crime at EU level. Europol has taken initial steps in this regard, within the context of its newly-developed Organised Crime Threat Assessment Reports (OCTA), the first of which issued in 2006.

In this paper, the Commission will consider what **links** exist between OC and corruption, try to identify **when** OC chooses to use corruption, rather than other tools at its disposal (such as violence or blackmail) within the context both of optimising its profits and of risk management. The paper will consider the costs of OC-linked corruption to society and the development of our knowledge in this area, and finally consider the range of counter-measures which already exist or are under development, which can make a positive contribution to preventing or repressing OC and corruption, even if not directly focused on the links between them.

The paper takes a multi-source approach, using information from European agencies, Member States, academic and other sources. Its focus is primarily on the situation within the EU Member States, although acknowledging the influence of external factors. While recognising the paucity of information currently available, it aims to identify potential approaches meriting further consideration and development.

This paper will pose more questions than it can expect to answer at this stage. However, by exploring as many aspects as possible of the links between organised crime and corruption, it will not only add to our understanding of the organised crime phenomenon, but identify how Member States and the Commission can increase the effectiveness of their responses to the challenges posed by these links.

¹ Franz-Hermann Brüner: *European Union initiatives in the fight against corruption* Article in Martin Kreutner ed. *The Corruption Monster Ethik, Politik und Korruption* Czernin Verlag Wien 2006 Page 31

² Daniel Kaufman, World Bank Institute, as quoted by Agence France-Presse, at the UNCAC signing conference in Mexico 9-11.12.2003

³ Serious Crime Agency (SOCA) Annual Plan 2006/7 Joint Statement by the Chair and Director General

⁴ "The European Council welcomes the development of a strategic concept with regard to tackling cross-border organised crime at EU-level...In this connection, issues relating to corruption and its links to organised crime should be examined." (Annex 1, Paragraph 2.7, European Council Conclusions November 2004)

2. DEFINING CORRUPTION AND ORGANISED CRIME

Corruption is a broad term commonly used to describe a range of behaviours, from those which are defined as criminal offences, the giving or receiving of a bribe, along a continuum to **good governance**, and thence to more broader concepts, such as inefficiencies in public service delivery. The use of one's public position for illegitimate private gains and various forms of abuse of power for private gain may also come within this continuum. Furthermore, public officials may on occasion be subject to threats and intimidation leading to a corruption of the decision-making process. However, this paper specifically focuses on the criminal law aspects which are at the core of corruption, and in particular on passive and active corruption involving the public sector. In 1997 the EU adopted the Convention on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union, one the first instruments world-wide, addressing corruption⁵. In this Convention, passive corruption is defined as:

"the deliberate action of an official who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties",

while active corruption is defined as:

"the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties".

These criminal offences are often associated, however, with other financial crimes and indeed, the UN Convention against Corruption (UNCAC) addresses not only passive and active corruption but also money laundering, embezzlement, misappropriation or other diversion of property by a public official, trading in influence, abuse of functions and illicit enrichment⁶.

It is not surprising therefore, that investigations of corruption are often wide-ranging, examining a tapestry of financial offences, and that prosecutions may in the end be taken on the basis of only some of the offences which come to light. This may contribute to a distortion of **statistics** on the incidence of corruption, if prosecutions proceed on the basis of other offences, where the evidence appears stronger and a conviction seems more likely.

The UN Convention on Transnational Organised Crime (UNTOC) defines **an organised criminal group** as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences...in order to obtain, directly or indirectly, a financial or other material benefit"⁷ and in turn, defines "serious crime" as "conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty"⁸ and "structured group" as "a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or

⁵ OJ C 195 25.06.1997

⁶ Chapter III, UN Convention against Corruption 2003

⁷ Article 2(a), UN Convention against Transnational Organised Crime 2000

⁸ Article 2(b) *ibid.*

a developed structure"⁹. The EU also takes a broad approach to defining OC, based on a structured association of more than two persons¹⁰.

Focusing on what might be termed "classic OC", Europol¹¹ identifies 3 categories of groups based on "selected indicators" and on the level of their penetration into society and the economy:

- **EU-based groups** use corruption to protect their assets and senior members, to develop the ability to counteract law enforcement efforts and attempt to become "respectable" within society
- **Non-EU based groups** are often cells of larger groups led from outside the EU. They use corruption, violence, influence, and legitimate business structures in their countries of origin, as well as keeping their assets there, while investing their criminal proceeds in legitimate enterprises in the EU
- **Intermediary situations** include the *second generation groups*, who eventually adopt some of the characteristics of an indigenous group, namely legitimate business structures and corruption or influence inside the EU", and *EU-based groups with a strong international dimension*, which shield their activities and members by placing either their assets or leaders outside the EU. Both types become more threatening over time as, with increasing maturity and experience, they seek to penetrate legal structures within the EU.

It would be reasonable therefore to conclude that there is a continuum in terms of ability and readiness of OC to use corruption to commit crimes, to exploit legitimate business and to insulate itself from outside scrutiny.

At the same time, bearing in mind the wide definitions used by the UN and EU, crimes such as **financial corporate crime**, which have not usually been thought of as typical examples of OC, would be forms of OC. An example would be where Directors or senior management commit the offence of insider trading. They may not facilitate their offence through violence, but they may use other tools such as corruption and personal contacts either to obtain useful information or to subsequently cover their tracks.

3. IS THERE A LINK BETWEEN ORGANISED CRIME AND CORRUPTION?

As far back as 1994, the UN's Naples Declaration¹² recognised that the growing threat of organised crime had a "corrupting influence on fundamental social, economic and political institutions", leading eventually to the development of UNTOC. Subsequently, in 1996 the UN referred to organised crime's use of "violence, intimidation and corruption to earn profit or control territories or markets"¹³. This view informed the development of the UNTOC,

⁹ Article 2© *ibid*.

¹⁰ Joint Action 1998/733/JHA: "...a structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities". Commission proposal for a Council framework decision on the fight against organised crime, COM (2005) 6 (OJ C 64 16.03.2005)

¹¹ Europol OCTA Report 2007

¹² UN GA Resolution 49/159 Naples Political Declaration and Global Action against Organized Transnational Crime 23.12.1994

¹³ UN GA Resolution 1996/27 Implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime 24.07.1996

which includes within its scope measures which specifically address corruption in the context of organised crime, but is limited to corruption involving the public sector.

The **Council of Europe** has acknowledged the existence of links between organised crime and corruption. One of the 20 Guiding Principles for the fight against corruption¹⁴, adopted in 1997, seeks:

"to ensure that in every aspect of the fight against corruption, the possible connections with organised crime and money laundering are taken into account".

Greco (which is the Council of Europe mechanism for monitoring its instruments on corruption, including the Criminal and Civil Law Conventions on Corruption) during its first evaluation round, issued a very comprehensive and wide-ranging questionnaire to its Member States. It included two relevant questions, namely:

"Is there reason to believe that there is a connection between corruption and organised crime?";

"Do specialised services in the fight against corruption co-operate with those fighting organised crime?"

As it is not treated as a separate element within the Evaluation Reports¹⁵, little information can be drawn from those on EU Member States¹⁶, although GRECO notes in many cases that a number of Member States place the police units investigating corruption within divisions focused on organised crime.

In 2004, **Europol** drew attention to the links between organised crime and corruption, recommending "The vulnerability to corruption of the public and the private sector needs to be properly evaluated. A clear-cut picture on the use of corruption by OC groups does not exist."¹⁷ Transfers from the EU budget are also vulnerable to the threat of OC, which is interested not only in profit, but in accessing legitimate markets for money laundering purposes, strengthening its control over territory through controlling local administration, and giving itself a legitimate appearance. A **Special Eurobarometer survey**¹⁸ of the then-25 EU Member States, carried out in late 2005, asked citizens for their views on whether most corruption was caused by organised crime. More than half of citizens believe that most corruption in their country is caused by organised crime (54%), while 35% believe the opposite and 11% have no opinion.

As indicated earlier, there appears to be relatively little **academic research** material available on this precise issue. One study¹⁹, however, provides a statistical approach to developing both a composite index of corruption and of organised crime respectively. Its sample of countries included 25 of the EU-27 (excluded Luxembourg and Cyprus) so it can be regarded as

¹⁴ Council of Europe: Resolution (97)24 on the 20 Guiding Principles for the fight against corruption 06.11.1997, see also Council of Europe Criminal Law Convention on Corruption (27 January 1999, ETS 17) and Civil Law Convention on Corruption (4 November 1999, ETS 174)

¹⁵ The Greco process supplements the Evaluation Reports with Compliance Reports, which follow up on Recommendations to States; Greco is currently on its 3rd Round of Evaluations

¹⁶ Austria joined Greco after the close of the 1st Round, and will therefore be evaluated in a joint 1st and 2nd Round, the Report for which is not yet available on the Greco website as of 04.07.2007; Italy became a member of Greco on 01.07.2007

¹⁷ Europol 2004 EU Organised Crime Report

¹⁸ "Opinions on organised, cross-border crime and corruption" Special Eurobarometer Survey No. 245, published March 2006

¹⁹ Edgardo Buscaglia and Jan van Dijk "Controlling Organized Crime and Corruption in the Public Sector" 2005 in *Berkeley Program in Law & Economics*, Working Paper Series, Paper 195

particularly relevant to this paper. The study shows a strong correlation between both indices, indicating that the relationship between OC and corruption is dynamic: "Rampant corruption offers opportunities for organized crime that are readily exploited by emerging criminal groups. When organized crime acquires a dominant position, corruption within the public sector is bound to grow." It identifies 5 levels of infiltration of the public sector by OC groups, from sporadic acts of bribery to the capture of a state's policy-making process leading to bias in law making, law enforcement and judicial decisions, all of which need to be addressed by preventive and repressive measures.

On balance, the choice of corruption as a tool appears to be based more on the nature of the objective than on the stage of the criminal process.

4. WHEN IS CORRUPTION USED BY OC?

4.1. When corruption is already widespread

One analyst²⁰ draws attention to the importance of culture and expectations: "The more widespread the belief that corruption is rife, the greater is the incentive to engage in it." He concludes that, in the absence of effective deterrents, "people will infer that there is so much corruption going on that those who are not part of the game are simply 'suckers' ". Europol²¹ agrees that the social and cultural context is an important factor in determining people's propensity to be corrupted. Thus, the reduction of both petty and grand corruption is an important factor in increasing resistance to bribery attempts from OC.

4.2. To facilitate crimes

With regard to "**classic**" **OC-related crimes**, there is evidence that corruption is one of a range of tools used.

A recent study in Italy²² found that having regard to the areas of interest of OC, preventive measures and coordinated operational activities should address, listed in order of priority:

- Environmental crime and abuse of the planning process
- Economy and public procurement contracts for building public infrastructure
- Public and EC funding
- Money laundering and investment in the legal economy
- Public Health Sector

The main issue in relation to **environmental crime** is the safe disposal of waste products, such as through appropriate management of landfill sites. It's an example of a sector which can be infiltrated by OC and all stages of collection and disposal of waste, and the purchase of sites for landfill, taken under their control.

Europol would suggest that "OC groups may have actively identified low-level administration and law enforcement as well as the business community as the weakest and most beneficial

²⁰ Diego Gambetta "Two types of corruption and the self-fulfilling nature of the beliefs about corruption" in "The Corruption Monster Ethik, Politik und Korruption" Martin Kreutner (ed) Czernin Verlag, Wien 2006

²¹ Europol OCTA Report 2006

²² Studio sui pericoli di condizionamento della Pubblica Amministrazione da parte della criminalità organizzata, Alto Commissario per la prevenzione e il contrasto della corruzione e delle altre forme di illecito nella pubblica amministrazione Relazione Sull'Attività Svolta 01.01-30.06.2006

targets to try to corrupt and influence" eg some groups make extensive use of corruption of municipal officials in order to obtain contracts²³. The relatively low pay attached to certain public sector posts, along with inadequate training, may be factors contributing to their vulnerability. Europol has also drawn attention to the targeting of "high-level targets" in the public sector, such as major **public procurement** contracts, by OC for which the preferred tool has been corruption and influence²⁴ both of paid and elected officials.

OC targets public and EU revenue²⁵ at local, regional, national and Community levels, and can create extra funding for use as bribes by inflating public procurement tenders.

Bribes can be a feature of drug and commodity trafficking, human trafficking and illegal immigration (eg border guards are targeted) as well as financial crime such as fraud²⁶. Taking **drug trafficking** as an example, the chain from initial production to end-user is long and complex. The operations tend to be well funded by professional entrepreneurs, often from a legitimate base. The main logistic problem for drug trafficking is securing delivery to the wholesaler or importer in the country of destination. This implies the cooperation of a considerable number of public servants in the area of production, along the route, and in the end-user country. The profit margins in the business are such that these costs can easily be borne.

At the European end, particular vulnerabilities exist among all individuals involved in managing incoming carriers and cargo, whether by air, sea or road. An example can be identified from a law enforcement agency perspective²⁷.

- Investigations are usually 'secretive, duplicitous and quasi-legal'
- The use of informants is widespread
- It is extremely difficult to regulate
- The 'war on drugs' rhetoric often increases pressure for results
- Securing sufficient evidence to convict is often difficult, leading in turn to the temptation to plant evidence or otherwise act improperly
- Officers may be required to buy or, occasionally, use drugs in the course of their work,
- Very large sums of money are offered.

This can lead to:

- Bribery of police officers to lie on oath and to provide confidential records
- Participation by police officers in drug dealing and protection of major drug operators.

Crimes such as **human trafficking** are often facilitated through the corruption of border guards who become part of the complex network developed by OC, particularly from Albania, Lithuania, Romania and Turkey, to ensure a supply of victims²⁸. **VAT carousels** often have a short life-span but can generate a disproportionately large economic return for the criminals,

²³ Europol OCTA Report 2006

²⁴ Europol OCTA Report 2006

²⁵ Information supplied by OLAF for the purposes of this paper

²⁶ Europol OCTA Report 2007

²⁷ Tim Newburn "Understanding and preventing police corruption: lessons from the literature" Police Research Series Paper 110 Home Office 1999 pages 26-7

²⁸ Hugo Brady "The EU and the fight against organised crime" Centre for European Reform Working Paper 2007

typically facilitated by the establishment of a number of "buffer" companies, to confuse the paper-trail and hide the fact that the same goods are travelling on the carousel many times. OC needs to be able to move goods effectively and efficiently. For land **transport**, it tends to exploit existing legitimate businesses or establish its own businesses, particularly to facilitate drugs trafficking and smuggling. Europol²⁹ has noted that OC identifies, targets, and corrupts key personnel in the public and private sector, as well as purchasing or forming companies which appear legitimate. With regard to air transport, OC uses corruption to facilitate the movement of high value goods, as well as using less highly controlled airports outside Europe. This is a response to the increasingly tight security around passengers. With regard to the maritime transport sector³⁰, dock workers and customs officials can be targeted in order to circumvent entry controls, eg in the UK, the use of a controlled delivery revealed that corrupt staff at a port were facilitating the entry of cocaine from Latin America³¹.

With regard to **"corporate" OC crime**, the extent to which corruption is used to facilitate crime is less clear eg in the Parmalat and Enron cases. Practitioners would have a general sense that corruption is particularly used as a supplementary tool in relation to optimising the effectiveness and profitability of the illegal activities, eg stock market manipulation, insider trading and other forms of "white-collar" crime, while at the same time, the use of positions of power, of expert knowledge and of personal connections and networks to carry out high-profit corporate crime cannot be underestimated.

As an indication of the extent of the **interconnections with different types of crime**, statistics from one Member State³² for 2005-2006 indicate that 10 separate dossiers were opened on cases where OC used corruption, although not as an exclusive tool. The same OC groups also used violence, threats and commercial structures to achieve their aims. A range of criminal offences were covered within those 10 dossiers, as follows:

Criminal Offences	Frequency	Proportion
Corruption	10	16.1%
Fraud (VAT, subsidies etc)	9	14.5%
Money Laundering	8	12.9%
False documents	5	8.1%
Trafficking in human beings	5	8.1%
Trafficking in vehicles	5	8.1%
Others	20	32.2%

This confirms the complexity both of addressing corruption offences and of developing useful statistics which can be compared across Member States.

These corruption offences took place not only in the Member States in question, but involved 3 other Member States and several third countries. The dynamics of corruption's transnational

²⁹ Europol OCTA Report 2007

³⁰ SOCA "The UK Threat Assessment of Serious Organised Crime" 2006/7 paragraph 3.17

³¹ SOCA Annual Report 2006/7 page 13

³² Supplied informally by a Member State

and international aspects make it more difficult to investigate such offences, not least from a resource perspective.

During those offences, the types of advantage provided to corrupted persons were:

Advantage	Proportion
Money	50%
Tangible benefits	18.8%
Not specified	31.2%

Definitions of corruption offences both in EU and international legal instruments already cover situations where the undue advantage may be either tangible or intangible, and these figures show the benefits of this broad approach.

4.3. To protect the proceeds of crime

It has long been recognised that OC is profit-driven, and hence **money laundering** to protect its profits is a key activity. For money laundering purposes, corrupt relationships are developed with a range of financial professionals, and with public and private sector employees. Many measures have been put in place at national, EU, and international (Financial Action Task Force, Council of Europe) levels to address money laundering and confiscation of the proceeds of crime.

One area which remains vulnerable is the **financial sector**. Indeed, details are usually not available on the nature of the link between criminals and financial institutions. The use of corruption or other tools to infiltrate a financial institution may be more effective for OC than ownership, given the stringent controls within which such institutions operate, the financial and technical investment required and OC' leadership's general preference to keep at a distance from the operational level where the illegal activities are carried out³³. OC can make use of corrupt or negligent professionals to carry out non-fiscal fraud, such as credit card fraud and the opening of fraudulent bank accounts. OC can also access the financial world by providing such a volume of business that the associated commission, bonuses etc are difficult for the financial operator to refuse.

4.4. To protect senior OC figures

Risk minimisation is a priority of senior OC figures. This objective can be achieved through building up **political protection** for senior OC figures. Research³⁴ has drawn particular attention to the negative impact of OC groups infiltrating high-level officials, both elected and unelected. OC groups can do so through financing election campaigns, through extortion or developing social and family links, as well as through bribery.

A particularly threatening manifestation of OC power is its attempts, frequent in some Member States, to avoid investigation, prosecution, or even conviction by targeting high-level law enforcement personnel, the judiciary, politicians and public sector officials, and even its gang members who are under investigation or on trial. Even where OC groups are adept at using corruption in these situations, intimidation and the use of violence are also potentially present. A recent transnational case illustrates this point:

³³ Europol OCTA Report 2006
³⁴ Edgardo Buscaglia and Jan van Dijk "Controlling Organized Crime and Corruption in the Public Sector" 2005 *Berkeley Program in Law & Economics Working Paper Series Paper 195*

Case study

This transnational case illustrates the willingness of a leading organised crime figure to corrupt law enforcement personnel in order to disrupt an investigation into his role in directing a multiple murder. This was done in a sophisticated and planned way, in that the subverted personnel in the law enforcement agencies colluded in carrying out a range of tasks on behalf of the crime figure, including erasure of his criminal record, manipulation of telecommunications data and enabling him to cross a border. There was a failed attempt to corrupt the investigating magistrate. The individual supplemented the corruption with violence (he arranged for the killing of the person who had carried out the murder on his behalf) and threats of violence (such as delivery of fake bombs to premises). The case is an example of a powerful organised crime figure with a sophisticated knowledge of legal systems and law enforcement agency structures both in the country of origin and in the targeted country. It represents a particularly disturbing situation, due to the spread of influence across countries and agencies which the individual was able to achieve. Furthermore, it indicates that, while organised crime generally is most corrupting in the society where it has its deepest roots, a determined individual can use corruption as a tool very effectively even in a targeted country.

4.5. Third country aspect

Because OC does not respect borders, the internal security of the EU cannot be protected unless its **external dimension** is also addressed eg in the EU neighbouring countries, in the Western Balkans. Stability and prosperity will flow from internal reforms and regional cooperation, which includes addressing OC and corruption. In turn, this increases the region's and neighbouring countries' security, and hence that of the EU.

There are implications for the EU from the level of corruption being experienced in neighbouring countries, or in those countries which are key points/nexus in certain types of crime, such as drug and human trafficking. Europol³⁵ indicates that the use of corruption is prevalent in both Albania and Kosovo, enabling OC groups to increase their penetration of the EU. Chinese OC groups, although in general operating within their own communities in EU states, may corrupt officials in order to obtain key documents, such as entry visas and residence permits. In certain third countries, OC uses corruption both as a direct tool for arranging drug shipments, human trafficking etc and also as an indirect facilitator, by virtue of the consequential weakness of public administration.

5. THE EU'S EXTERNAL AID PROGRAMMES SUPPORT THE FIGHT AGAINST CORRUPTION IN THIRD COUNTRIES THROUGH THE PROVISION OF, INTER ALIA, TECHNICAL ASSISTANCE, EQUIPMENT AND TRAINING."COST OF OC-LINKED CORRUPTION TO SOCIETY

Notwithstanding the estimates of the global costs of corruption, however, no figure seems to be available which would indicate the proportion of this cost which could be ascribed to corruption linked to OC.

In addition to the costs which arise from OC-linked corruption of the public sector, costs also arise from its use of **legitimate private sector companies** and **markets for licit goods**. OC

³⁵ Europol OCTA Report 2006

penetrates the legitimate business sector³⁶ through corruption, intimidation and establishing its own businesses by

- using innocent established and reputable companies, or
- corrupting or coercing managers or employees of such companies

The transport and import-export sectors are particularly targeted in order to facilitate criminal activities, while cash based business, such as restaurants, shops and betting provide outlets for money laundering. Part of the motivation for the use of legitimate businesses could actually be the effectiveness of existing anti-money laundering measures.

The costs to society are not only financial. A particular concern arises from the use of the construction industry and infiltration of property markets as a means for the key OC figures to develop a public profile, and hence begin to wield **economic and political influence** within societies, in addition to securing their assets in the long-term. Indeed, Europol³⁷ indicates that OC's ability to infiltrate legitimate business could be seen as almost as threatening to the fabric of democratic society as its willingness to use violence to achieve its aims.

6. EFFECTIVE COUNTER-MEASURES

Assessing the effectiveness of existing **counter-measures** and developing new ones requires a lot more information than is available at present. Similarly, there is insufficient information among Member States and at EU level to accurately identify underlying **trends** regarding the links between OC and corruption.

Nevertheless, some approaches can already be endorsed. The UN states that "...a solid and functioning criminal justice system based on the rule of law is the sine qua non for effective action against transnational organized crime and corruption."³⁸ **Europol**³⁹ points out that "the functional side of OC must be focused on, asking the question what they are doing and how rather than who they are".

The role of the **media**, the **general public** and **civil society** should not be neglected in the attempt to understand the links between OC and corruption and to generate momentum for change. Many instances of corruption have come to light from such sources which may then prompt law enforcement agencies to investigate particular cases. At the same time, law enforcement agencies make growing use of the intelligence-led approach in the Member States in order to stay abreast of developments.

Member states and the **institutions** of the EU clearly have a role not only in the prevention and repression of organised crime and corruption as separate phenomena, but also in effectively addressing the links which bind them. In this regard, a wide range of measures already exist or are under development which can contribute to this process, eg in relation to **OC** and **corruption**, as well as measures which support cooperation eg the establishment of **Europol** and **Eurojust**. These measures are relatively well-known. Furthermore, a German initiative on the adoption of a Council Decision on a contact point network against corruption, which has the potential to enhance cooperation among authorities and agencies of the Member States charged with preventing or combating corruption, is under consideration in the Council

³⁶ Europol OCTA Report 2007

³⁷ Europol OCTA Report 2006

³⁸ UN Economic and Social Council Report of the Secretary General "International cooperation in combating transnational organized crime and corruption" to the Commission on Crime Prevention and Criminal Justice paragraph 83 20.03.2007

³⁹ Europol OCTA Report 2006

and Parliament⁴⁰. They are not isolated and stand-alone, but are dynamically inter-related. The lists which follow are not exhaustive, but illustrate the range and diversity of further measures, perhaps not so well known, which can address these links either directly or indirectly.

6.1. Preventive measures at EU level

Italy has a particular depth of experience in addressing indigenous OC groups which had become entrenched in certain regions of Southern Italy to the extent that they were interfering in the political systems, law enforcement and the public administration of that area. One of the ways in which the Italian authorities have sought to address this intransigent problem has been to focus on establishing a **safe environment for citizens** through the national programme "Security for the development of the Italian Mezzogiorno", cofunded by the EU's structural funds⁴¹. The programme brought together national law enforcement agencies, entrepreneurs, industrialists and trade unions in a comprehensive approach to combat criminal activity. Among the methods used to regain territorial control were appropriate technological interventions, comprehensive and focused training programmes for law enforcement personnel and improvement of security, legality and transparency at local level. Italy has subsequently shared its experience with neighbouring countries⁴².

Public private partnerships are a useful model for bringing together the public and private sectors. They provide a valuable forum for sharing understanding of these links, while deepening awareness and vigilance, and supporting the development of such counter-measures as codes of conduct.

The **Administrative approach to OC** is an initiative of the Netherlands. In response to the findings of a Parliamentary report on OC in Amsterdam⁴³, the Netherlands developed a number of measures to promote integrity and reduce vulnerabilities eg carrying out internal risk assessments and screening of applicant companies for OC connections. The Council has endorsed the initiative⁴⁴. Under the Commission's auspices, Member States' experts have met⁴⁵ to learn more about the initiative, and the Netherlands is currently developing a best practices manual, to which the Commission and Member States have contributed.

High standards of public administration are recognised as a key element in preventing corruption, and a number of relevant measures are already in place at EU level. An intergovernmental mechanism, the European Public Administration Network (EPAN), is already in place to promote awareness of integrity and ethical conduct in Member States' public sector. The Staff Regulations of the EU institutions provide a firm foundation for the highest standards of integrity, reinforced by the establishment of the Investigation and Disciplinary Office (IDOC). The European Anti-Fraud Office (OLAF) plays a key role in addressing fraud and corruption in relation to the Communities' financial interests. In

⁴⁰ Initiative of the Federal Republic of Germany with a view to the adoption of a Council Decision on a contact-point network against corruption (OJ C 173/3 of 26.07.07)

⁴¹ Italian Objective 1 CSF 1994-1999 Operational Programme and 2000-2006 European Fund for Regional Development

⁴² Eursed Project "Europe, Security and Development", funded under the 2005 AGIS Financing Programme, final report issued December 2006 Rome

⁴³ Report of the Netherlands Parliamentary Committee of Enquiry into Methods of Investigation 1996

⁴⁴ JHA Council 02.12.2004

⁴⁵ Meeting of the EU Forum on the Prevention of Organised Crime 02.02.2006

addition, the Commission's recent European Transparency Initiative (ETI) aims to maximise transparency within the institutions eg by establishing a public register of lobbyists⁴⁶.

A Regulation⁴⁷ on **Controls of Cash entering or leaving the Community** came into effect in 2007 which requires persons carrying €10,000 or more in cash or cash-equivalents to declare it with the appropriate authority. It serves the threefold purpose of addressing money laundering, terrorism and criminality. The provisions in Directive 2005/60/EC contain specific measures to be adopted by financial and non financial covered entities in relation to Politically Exposed Persons (PEP). The particular rationale of these provisions is to address adequate prevention of corruption-related money laundering⁴⁸.

Two Directives on **Public procurement**⁴⁹ are in place to ensure that appropriate standards are in force in this area.

Developing a **qualitative analysis** of the links between OC and corruption will be a fundamental factor in improving the understanding of their nature and dynamics. Following the adoption of the Commission's 5 Year Action Plan in 2006, an **expert group on the policy needs for data on crime and criminal justice** was established in April 2007. It will examine a range of policy areas in the coming years. . One of its objectives is to provide useful information in relation to the development of comparable crime statistics on corruption in due course. Repeating the **Special Eurobarometer survey**⁵⁰, mentioned earlier, will also add to the knowledge of the changing situation in Member States from the citizen's perspective.

Furthermore, the Commission has already funded a number of **studies** which can be expected to produce findings relevant to this topic, although this would not have been their exclusive focus. Such studies include:

- "Study to assess the scope of and collect available statistics and Meta-Data on Five Crime Types and Propose Harmonised Definitions and Collection Procedures for these Types of Crime for the EU Member States and the Acceding Countries", commissioned by DG Justice, Freedom and Security⁵¹
- "Improving Knowledge on Organised Crime to develop a common European approach (IKOC)" under the EU's 6th Framework Programme on Research⁵².
- Crime as a Cultural Problem: the Relevance of Perceptions of Corruption to Crime Prevention (Crime and Culture)" under the 6th EU Research Framework Programme"

Recognising the importance of addressing vulnerability to penetration by OC in the **political sphere**, the Commission has commissioned a study on corruption within the public sector in

⁴⁶ Details are available at http://ec.europa.eu/commission_barroso/kallas/transparency

⁴⁷ Regulation (EC) No. 1889/2005 applicable from 15.06.2007

⁴⁸ Please see article 3(8), 13(4) of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, 25.11.2005, OJ L 309, p.15, see also implementing measures in Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis, 4.8.2006, OJ L 214, p. 29

⁴⁹ Directives 2004/17/EC and 2004/18/EC

⁵⁰ Special Eurobarometer Survey No. 245

⁵¹ Project coordination: Transcrime - Università degli Studi di Trento and Università Cattolica del Sacro Cuore, Milan

⁵² Project coordination: Università Cattolica del Sacro Cuore, Milan (final Report due late 2007)

the EU Member States addressing inter alia the financing of election campaigns, political parties and lobby groups under the AGIS programme , which was done in late autumn 2007.

Specialist agencies in Member States, such as Italy's High Commissioner⁵³, also encourage relevant research.

6.2. Repressive measures at EU level

Initiatives are already in place or under development regarding criminalisation of **corruption**⁵⁴ and **organised crime**⁵⁵. In addition, measures have been taken to address **proceeds of crime and asset recovery**⁵⁶ and **money laundering**⁵⁷. With regard to OC occurring in a **corporate** setting, the Commission responded to the Enron and Parmalat scandals by issuing a Communication on preventing and combating **corporate and financial malpractice**, followed by a Directive on **audit of company accounts**⁵⁸. These measures aim to safeguard investors, through enhanced transparency, improved traceability and better coordinated enforcement in relation to companies' activities.

Member States actively consider the development and use of **special investigative techniques** (such as the use of informants, specialised technology, controlled deliveries) to assist their investigations, while bearing in mind the need to balance such developments with the protection of privacy.

The establishment of adequate schemes for **protection** of those who cooperate with the justice system (including witnesses and jurors) is underway in Member States.

7. CONCLUSION

While progress has been achieved on many facets of the fight against OC and corruption as separate phenomena, much remains to be done to identify and address the links between them. The counter-measures mentioned in this paper make a vital contribution to reducing the incidence of both OC and corruption. Nevertheless, it is clear that those measures which are in place impact on the links almost by chance, since they were not developed for this specific purpose. Furthermore, it is difficult even to describe the links with certainty, never mind to analyse them accurately, with a view to developing effective policies and legislation, in the absence of the necessary quantitative information. Clearly, further work is needed to develop beyond this embryonic stage into a mature understanding of these links.

A suggested next step would be the commissioning of a **study** to specifically focus on the modalities of the links between OC and corruption, which would:

⁵³ Alto Commissario per la prevenzione e il contrasto della corruzione e delle altre forme di illecito nella pubblica amministrazione

⁵⁴ **Convention** on the Protection of the European Communities' Financial Interests 1995 (OJ 95/C 316/03 27.11.95); **Protocol** of 27.09.1996 (OJ 96/C 313/01 23.11.96); **Protocol** of 29.11.96 (OJ C 151/2 20.05.97); **Protocol** of 19.06.97 (OJ C 221/11 19.07.1997); **Convention** on the Fight against Corruption involving officials of the European Communities or officials of Member States of the European Union 1997 (OJ 97/C 195/01 25.06.97); **Council Framework Decision** 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192/54 of 31.07.03)

⁵⁵ Commission proposal for a Council framework decision on the fight against organised crime, COM (2005) 6 (OJ C 64 16.03.2005) has been politically agreed on 28 April 2006 but not formally adopted yet.

⁵⁶ **Council Framework Decision** 2001/500/JHA (OJ L 182/1 of 05.07.2001); **Council Framework Decision** 2003/577/JHA (OJ L 196/45 of 02.08.2003); **Council Framework Decision** 2005/212/JHA (OJ L 68/49 of 15.03.2005); **Council Framework Decision** 2006/783/JHA OJ L 328/59 of 24.11.2006)

⁵⁷ Third Money Laundering Directive of 26.10.05 No. 2005/60/EC (OJ L 309/15 of 25.11.05)

⁵⁸ Directive 2006/43/EC (OJ L 157 of 09.06.06)

- research the dynamics of both "classic" OC crime and "corporate" OC crime, to identify when corruption, rather than other tools, is the preferred method
- identify the specific vulnerabilities to corruption within private sector organisations
- consider how and when the link between OC and corruption can be defined, so that there is a starting point for future assessment both of trends in this link, and of the effectiveness of the various preventive and repressive measures currently in place or under development at Member State and EU level, bearing in mind the wider context, including external dimension of JLS and EU support to third countries as well as UNTOC and UNCAC

The results of the study may also complement the work of the **Commission's Expert group on the policy needs of data on crime and criminal justice**, specifically in relation to its promoting the development of harmonised operational definitions and statistical indicators on corruption. Addressing OC's use of corruption in a focused and multi-faceted fashion should lead to the curtailment of criminal profits and associated criminal lifestyle, undermine its perceived immunity and, in particular, disrupt its ability to influence the organs of state.