



Council of Europe

**PREVENTIVE LEGAL MEASURES  
AGAINST  
ORGANISED CRIME**

Organised crime – Best Practice Survey n°9

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# 1 GENERAL

## 1.1 INTRODUCTION

The Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime (PC-S-CO) was established in 2000. Its terms of reference state that the Committee should - *inter alia* – carry out best practice surveys.<sup>1</sup> These surveys should allow member States to benefit from the experience of other member States in combating organised crime.

Each survey concentrates on a particular approach or method. For practical reasons, only a few countries are selected for analysis on the basis of their experience in the particular field and to permit different legal systems and geographical region within Europe to be reflected.

The present report covers the topic of preventive legal measures against organised crime. It is based on a study of three Council of Europe member States: Estonia, the Netherlands and Sweden.

The three member States selected for this best practice survey were all visited in November 2002 by a small delegation of the PC-S-CO. The mission started in Stockholm (25-26 November), proceeded to Tallinn (26-27) and from there to the Hague (28 November) and Amsterdam (29 November).

The delegation was composed of Prof. dr. Michael Levi (Cardiff University – UK), Prof. dr. Tom Vander Beken (Ghent University – Belgium) and Mr. Alexander Seger (Council of Europe).

## 1.2 BACKGROUND

The idea that traditional ‘repressive’ law enforcement bodies (police, prosecutors, courts) should have a monopoly on reactions to organised crime is under widespread revision because it is clear that alone, they are unlikely to have sufficient impact on levels of criminality. Therefore, the prevention of organised crime has been placed high on the agenda of national and international bodies:

*“Prevention is no less important than repression in any integrated approach to organised crime, to the extent that it aims at reducing the circumstances in which organised crime can operate. The Union should have the instruments to confront organised crime at each step on the continuum from prevention and repression and prosecution.”* (EU-Action Plan to Combat Organised Crime, 1997)

*“There is a growing understanding amongst policy makers, professionals and academics that the traditional enforcement approach to tackling organised crime will not, alone, bring about the hoped-for reduction in such activity.”* (Joint Report of the European Commission and Europol “Towards a European Strategy to Prevent Organised Crime”, 2001)

A specific aspect of the prevention of organised crime is focused at the reduction of existing or future opportunities for organised criminal groups to participate in lawful markets with proceeds of crime, through appropriate legislative,

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<sup>1</sup> So far, Best Practice Surveys on witness protection, the reversal of the burden of proof, interception of communications, crime analysis and cross-border cooperation have been published.

administrative or other measures. Measures can be taken at an internal and at an external level.

Internally, governments can react against organised crime by strengthening the integrity of their public officials. For example, preventing corruption in public procurement is regarded as one of the essential topics to be addressed (Council of Europe, Programme of Action against Corruption 1996, C.1.1).

Externally, States can try to exclude organised crime groups from participation in certain legal activities or from doing business with the government. For this purpose, special legal instruments can be developed which make it possible to exclude (organised) criminals from contracting with the government (e.g. public procurement) or from obtaining official permits or licences (e.g. building permits, the sale of financial services) from that government or public administration. The efficiency of such a system depends on information and information exchange: only if the requested information is available and can be made use of is exclusion or disqualification possible.

Both internal and external measures are addressed in international legal instruments and documents.

Council of Europe Recommendation R (2001) 11 on guiding principles on the fight against organised crime (adopted in September 2001) contains a chapter on the prevention of organised crime, including:

4. *Member states should identify in their legislation those provisions, which are or can be abused by organised crime groups for their own purpose, in areas such as export/import, licensing, fiscal and customs regulations, and take steps to strengthen legislation and to prevent abuse. In particular, member states should ensure mutual consistency of provisions and should have these provisions regularly tested by independent auditors to assess their "resistance" to abuse, such as fraud.*
6. *Member states should establish common standards of good governance and financial discipline that enhance transparency and accountability in public administration, and should encourage the adoption of codes of conduct to prevent illegal practices, such as corruption, in the commercial and financial sectors, including public procurement.*

Article 31 of the 2000 United Nations Convention against Transnational Organised Crime contains specific provisions:

*"2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for organized criminal groups to participate in lawful markets with proceeds of crime, through appropriate legislative, administrative or other measures. These measures should focus on:*

*[...]*

- b) The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;*
- c) The prevention of the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;*
- d) The prevention of the misuse of legal persons by organized criminal groups; such measures could include:*

- (i) *The establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;*
- (ii) *The introduction of the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction;*
- (iii) *The establishment of national records of persons disqualified from acting as directors of legal persons; and*
- (iv) *The exchange of information contained in the records referred to in subparagraphs d) (i) and (iii) of this paragraph with the competent authorities of other States Parties.”*

Similar provisions are listed in the European Union the 1997 Action Plan to Combat Organised Crime:

*“The European Council stresses the importance of enhancing transparency in public administration and in business and preventing the use by organised crime of corrupt practices. In this context, the Member States, the Council and the Commission should [...] take necessary steps to allow the exclusion of criminal organisations for their members from participation in tendering procedures, receiving subsidies or governmental licenses. Specific attention should be paid to the illicit origin of funds as possible reason for exclusion from tendering procedures.” (Political Guideline 13)*

*“The Member States and the European Commission should ensure that the applicable legislation provides for the possibility for an application in a public tender procedure who has committed offences connected with organised crime to be excluded from the participation in tender procedures conducted by Member States and by the Community. In this context it should be studied whether and under what circumstances persons who are currently under investigation or prosecution for involvement in organised crime, could also be excluded. [...] The decision of exclusion of a person from participation in a tender procedure should be capable of being challenged in court.” Similarly, the Member States and the Commission should ensure that the applicable legislation provides for the possibility of rejecting, on the basis of the same criteria, applications for subsidies or governmental licenses.[...].” (Recommendation 7)*

In the EU 2000 Strategy for the Beginning of the New Millennium on the Prevention and Control of Organised Crime these recommendations are reiterated and linked to the outcome of a EU wide study on procurement and organised crime. This study (White, 2000) pointed at large differences between the Member States in exclusion procedures (criteria, crimes, conviction or suspicion, ...), in information systems (blacklists, self-declaration, ...) and at lack of co-operation and co-ordination.

Although such preventive measures are believed to be very efficient, they raise new questions. First, and especially for EU Member States, there are questions about the compatibility of some exclusion procedures with the internal market and free competition requirements. Article 24 of the Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public work contracts, for example, stipulates that any contractor may be excluded from participation in the contract who:

- [...]*
- (c) has been convicted of an offence concerning his professional conduct by a judgment, which has the force of res judicata;*

*(d) has been guilty of grave professional misconduct proved by any means, which the contracting authorities can justify;*

*[...]*

*Where the contracting authority requires of the contractor proof that none of the cases quoted in (a), (b), (c), (e) or (f) applies to him, it shall accept as sufficient evidence:*

*for points (a), (b) or (c), the production of an extract from the judicial record, or, failing this, of an equivalent document issued by a competent judicial or administrative authority in the country of origin in the country whence that person comes showing that these requirements have been met;*

*[...]*

*Where the country concerned does not issue such documents or certificates, they may be replaced a declaration on oath or, in Member States where there is no provision for declarations on oath, by a solemn declaration made by the person concerned before a judicial or administrative authority, a notary or a competent professional or trade body, in the country of origin or in the country whence that person comes.*

*Member States shall designate the authorities and bodies competent to issue these documents and shall forthwith inform the other Member States and the Commission thereof.”*

If exclusion in one State is more extensive than the Directive allows (e.g. exclusion based only on suspicions), this could be in conflict with the EU legislation and could affect the equality between the players and therefore the openness and fairness of the free market in goods and services (Manunza 2001)<sup>2</sup>.

Second, legislative measures aimed at preventing organised crime all imply the use of personal data. Privacy regulations such as Article 8 ECHR restrict the use and exchange of this kind information, and thus limit the possibilities of undertaking such measures (Van Heddeghem et al. 2001).

### 1.3 PURPOSE OF THE BEST PRACTICE SURVEY

The PC-S-CO best practice survey on preventive measures against organised crime does not have the objective to study all aspects related to the subject or to duplicate prior studies made. The purpose of the survey is to provide guidance to the member States of the Council of Europe that wish to elaborate preventive legal measures against organised crime by focusing on experiences and the best practices of three member States (Sweden, Estonia and the Netherlands). As other programmes focus more on *internal* measures regarding the prevention of organised crime, this survey mainly deals with the *external* aspects of the issue.

As the practices of the member States differ to a large extent, this report addresses the situation in each member State separately. In a final chapter the practices are compared and overall conclusions are proposed.

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<sup>2</sup> Though it is arguable that differences in investigative capacities and enforcement levels in different EU and Council of Europe member States themselves produce variations that amount in practice to unlevel playing fields.

## 2 SWEDEN

### 2.1 THE ORGANISED CRIME SITUATION

Until recently, little was known about the organised crime situation in Sweden. An in depth study of 2002 (Brottsförebyggande rådet 2002) stated that the organised crime in Sweden does not fit all international definitions of the phenomenon. The Swedish situation is considered more a case of organised “offences” than of organised “crime”. Organised crime of the kind referred to in the more widely used definitions is nonetheless said to be found in Sweden, especially in cases where Sweden is used as a market or transit station in relation to the smuggling of drugs and tobacco.

Organised crime in Sweden, whether conducted within the framework of organisations or networks, is said to occur in the following areas (Brottsförebyggande rådet 2002, 54-55):

- Drugs
- Smuggling of alcohol, tobacco and performance enhancers
- Theft (*inter alia* trading in stolen cars)
- Economic crimes (tax, VAT, fraud, black market offences)
- Money laundering
- Trafficking in women and the sex trade
- Illegal immigration
- Illegal gambling operations
- Arms trade
- Extortion, serious robbery and murder.

Obviously, this is a fairly comprehensive list of all areas where serious crimes for gain would be likely to occur.

The report points at the exploitation of markets as the most telling characteristic of organised crime in Sweden (sex, gambling, alcohol, tobacco and drugs) and refers to motorcycle gangs involved in (organised crime) activity related to extortion, illegal immigration, smuggling, drug offences and economic crime.

Although the situation in Sweden might not be considered too alarming at this time, the report suggests a trend towards an increase in threats, actual violence and corruption (Brottsförebyggande rådet, 2002, 56).

The 2002 EU Organised Crime Report (Europol 2002, 77) states that the picture of organised crime that affects Sweden has through increased knowledge become clearer and at the same time more complex. The networks/groups are of a more flexible nature and it is more difficult to decide where they start and where they end.

For the purpose of this best practice survey, it should be stressed that both the EU report and representatives from the Swedish National Criminal Investigation Department consulted point out that criminals in Sweden have become more entrepreneurial with many and various occupations, within legal as well as illegal spheres of activity. According to these sources, there is a growing risk of the infiltration of organised crime into legal business in Sweden (though it cannot be certain whether they will exploit these for criminal purposes or merely for diversification or even legitimisation).

## 2.2 ORGANISED CRIME (PREVENTION) POLICY

Sweden was confronted with some cases involving smuggling of alcohol in the 1920s and has always suffered from white-collar crimes. However, except for drug legislation in the 1960s focusing on the supply side, organised and economic crime was not on the political agenda until the 1970s. In the beginning of the 70s, along with mass coverage of various specific cases, economic, environmental and organised crime became an issue.

At a meeting of the European Ministers of Justice in 1973, Sweden, together with France, took the initiative to have a Council of Europe study on economic crime. A committee was formed and the matter was discussed at the 12<sup>th</sup> Criminology Congress in Strasbourg in 1976 and taken up again in other conferences and meetings (Korsell, 2001, 93).

In 1976 Sweden established a working group against organised crime (*Arbetsgruppen Mot Organiserad Brottslighet* - AMOB), appointed at the National Police Board but also comprising criminologists and representatives from the State Prosecution Service, the Central Bank and the Tax Administration (Korsell, 2001, 93 and *Brottsförebyggande rådet*, 2002, 17). This working group provided the first study of the extent of economic and organised crime in Sweden.

One of the recommendations of AMOB was to introduce legal instruments to improve the possibilities for systematically analysing legislation, scrutinising legislative proposals and suggested legislative changes with regard to economic and organised crime.

In 1977 the Swedish National Council for Crime Prevention was commissioned by the government to carry out a comprehensive overhaul of the legislation against both economic and organised crime. In this study recommendations have been made on various topics (e.g. on the importance to have an exchange of information between the authorities involved and on necessary changes in the law on public procurement).

In the 1980s, the attention shifted to economic crime only, with the establishment of the Economic Crime Commission, which was tasked to propose suitable measures against economic crime and tax evasion within the framework of a unitary and co-ordinated strategy.

One of the proposals of the Economic Crime Commission was the establishment of a system of permits and licences in certain commercial sectors. The idea was that economic crime could be prevented if thresholds to enter certain businesses (minimum knowledge of book keeping, a minimum capital, no criminal convictions, etc) were set. However, instead of carrying out substantial amendments to the legislation and introducing a new permit system, the already existing system of permits regarding transportation and the sale of alcohol was changed to stress the prevention of economic crime.<sup>3</sup>

Political interest in the question of economic crime gained momentum in the middle of the 1990s. In 1995 the government presented a strategy for a co-ordinated response to economic crime, which led, *inter alia*, to the recommendation

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<sup>3</sup> Such checks on the criminal backgrounds and competence of financial services personnel are universal in the EU, but the extension of such checks to non-financial services personnel is highly variable, even within the EU. This is not done in the UK, for example, especially not in private companies.



to provide the government with information on economic crime and to develop new legislation. In every country there is now a co-ordinating body for measures against economic crime, and at the central level, a further co-ordinating body – the *Economic Crime Council* – was established.

At that time and quite separately from economic crime, organised crime came back in the picture as well. As a consequence, a commission dealing with the prevention of (economic and organised) crime and fraud in the Swedish commercial sectors was established. The report of this Commission strongly recommended measures to prevent organised crime activities in legitimate businesses (Justitiedepartementet, 1997, 39-41):

*“In the Commission’s view, preventive methods are the most effective means of reducing the opportunities for crime, and placing obstacles in the path of those who try to take advantage of the system will reduce the incidence of crime.*

*The systems and regulatory frameworks that apply to permits and licenses, government support for businesses, EU aid, authorities’ supervision and public procurement can be used as administrative filters to exclude economic and organised crime from integration into the regular economy. In the Commission’s view it should be possible to use these systems and frameworks systematically for the purpose of combating economic and organised crime.*

*The Commission’s report reviews several administrative systems that could be used as a means of excluding criminal elements from the business sector, for example the system of granting licenses and supervision in the restaurant and commercial traffic sectors, the public procurement system, the rules governing grants for the construction or renovation of buildings and the requirement for tax assessment certificates in the construction, cleaning and removal sectors. [...]*

*Public procurement in Sweden alone accounts for an annual turnover of 300 billion SEK and thus represents a very significant economic factor. [...] Public procurement is thus an appropriate area in which to start the cleaning up process.*

*In addition to the sector-by-sector treatment of the subject, the Commission makes the following assessments and proposals:*

- *Purchasing entities should reject exceptionally low tenders for which the tenderer cannot give a reasonable explanation;*
- *Stricter checks of non-Swedish suppliers in the registers of companies in their country of domicile;*
- *Stricter check of non-Swedish suppliers’ tax arrears in their country of domicile;*
- *Swedish suppliers should be required to produce tax assessment certificates;*
- *It should be possible to exclude legal persons from a tender procedure if their directors etc. have been convicted of any offence in the exercise of their profession (applies only to tenders involving amounts under the EU threshold values);*
- *Purchasing entities should be authorised to check suppliers’ financial status and technical capability;*
- *Purchasing entities should be authorised to require tenderers to give particulars of the subcontractors engaged by them;*
- *Sweden should urge the adoption of more stringent provisions relating to the requirements to be fulfilled by suppliers under EEC directives.”*

## 2.3 EXAMPLES OF PREVENTIVE LEGISLATIVE MEASURES TAKEN

### 2.3.1 Company registration

The Swedish Patent and Registration Office (*Patent- och Registreringsverket – PRV*) is a fee-financed executive government agency and service organisation operating under the Swedish Ministry of Industry. The agency is made up of a number of departments, one of which is the Companies Department (*PRV Bolag*), which registers companies and associations and carries out commissions. PRV has been registering limited liability companies in Sweden since 1897. The organisation has now grown to cover all enterprises, including Swedish branches of foreign companies. PRV has taken over responsibility for a large number of tasks from county administrative boards, districts courts and the Swedish Board of Commerce. PRV Bolag deals with certain aspects of permits and maintains a register of bankruptcies and bans on conducting business (PRV Bolag, Trade and Industry Register, 3).

In most cases a business can only be started if it is registered with PRV. In the case of a limited company, a trading partnership or an economic association, this is absolutely necessary: these forms of business enterprises do not come into existence until they are registered. PRV checks that the business enterprises and the persons to be registered meet the requirements of the law. PRV gets notified of relevant events and keeps a bankruptcy register and a trade ban register showing persons in Sweden banned from carrying on business (PRV Bolag, At the service, 5 and PRV Bolag, Forms of Business Enterprise, 3). Trade bans (law 1986: 436) are temporary sanctions decided by the courts in case of conviction for offences concerning his professional conduct or in cases of grave professional misconduct. In some cases (serious crimes, huge impact on society, etcetera) the courts are obliged to issue a trade ban.

Although this system was not set up to prevent organised crime from entering into legal businesses as such, it is considered to be a possible tool for that purpose. Practice at PRV Bolag shows that it is possible to discourage (organised) criminals from registering their business if registration officers pay specific attention to this issue<sup>4</sup> and if co-operation and information exchange with other agencies and law enforcement is established:

*“Serious businessmen have the right to demand that the registration authority makes sure that serious businesses stick to the rules within the legal area we cover, that is company law etc. But the serious businessman and society in general also have the right to demand that the registration authority helps to detect crime and also make it more difficult to commit crime. Our registration must not become an easily accessible tool for getting round relevant laws. We must make a contribution to the conditions necessary for healthy competition and fair play.” (Nordström 2000)*

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<sup>4</sup> One difficulty in some jurisdictions is that the privatisation of companies registration offices or making them into separate cost centres while remaining under public ownership tends to discourage the exercise of public interest functions, since they see their role as facilitating business and avoiding ‘unnecessary’ costs such as making enquiries of this kind. Our review did not observe this, but it remains a possibility against which member States should guard when considering such issues.

The following recommendations were made (Nordström 2000):

- More active co-operation between authorities on the national and international level: regular meetings with other authorities (tax authorities, police, customs, law courts, property register, financial supervisory authority,...). Although regarded as sensitive, it should be possible to inform law enforcement at a preventive stage.
- Blacklisting: development of a black list containing fictitious business enterprises, persons etc. linked to a computerised warning system at the registration office.
- Police at the registration office: an alternative to the concept where the registration authority's staff are to be more active is that personnel from the police and tax authorities may be present at the registration office in order to detect criminal methods in an early stage.
- Co-operation with the individual business enterprises by enabling them to use the (open) registers of the registration office to scan their potential business partners.
- International co-operation: easy access for registration offices to registers in other countries including black lists.
- Recognition of foreign trade bans: in Sweden, only trade bans issued by Swedish courts can be taken into account. Foreign trade bans should be registered as well.

### 2.3.2 Public procurement

The Public Procurement Act (*Lag 1992: 1528 om offentlig upphandling* – LOU), as amended in 2002, regulates almost all public procurement which means that contracting entities, such as local government agencies, county councils, government agencies as well as certain publicly owned companies etc, must comply with the act when they purchase, lease, rent or hire-purchase supplies, services and public works. The rules are different for public procurement above and below a number of so-called threshold values. For procurement above the threshold values, the LOU is based mainly on EC directives. Below the threshold values, the provisions are national and the EC directives do not apply (NOU, 4).

The Swedish National Board for Public Procurement (*Nämnden för offentlig upphandling* – NOU) has the task to supervise observation of the LOU, the GATT agreement and the procurement agreement under the WTO, to work for efficiency in public procurement, to spread information by means of telephone advisory services, newsletters, publications, seminars and conferences, to give general advice and comments on how the procurement regulations shall be interpreted and to follow developments in the area of procurement in the EU and the WTO.

Chapter 1, Section 17 of the LOU deals with exclusion of tenderers when it comes to tendering procedures over the threshold values. This section is almost a verbatim translation of the relevant articles of the different directives. With regard to exclusion due to organised crime two of six points of section 17 may be of relevance. They state that a supplier may be excluded from participation in an award procedure if he:

“[...]”

3. has been convicted of an offence concerning his professional conduct by a judgement that has the force of *res judicata*;

4. has been guilty of grave professional misconduct and the contracting entity can furnish proof of this circumstance;

“[...]”

Several questions arise with respect to convictions as grounds for exclusion from a business:

- A first question is related to the *offences* referred to. In the report mentioned above (Justitiedepartementet, 1997, 462), it was suggested that economic offences and tax crimes should be of general relevance and that other offences may be relevant depending on the business of the tenderer in question. Participation in organised crime probably belongs to the types of offences that can be used as ground for exclusion.
- A second question is whether the offence must also have some *connection to the procurement in question* or if it is sufficient that the offence concerns the profession of the tenderer.
- A third problem relates to the *legal person*. Since legal persons cannot be convicted for a criminal offence under Swedish Law, most lawyers state that no exclusion is possible if the tenderer is a legal person. However, some lawyers advocate the view that legal persons can be excluded under this rule if the director or a person in the board has committed a relevant offence. Furthermore, a special penal sanction (*företagsbot*) can be imposed on companies if offences have been committed in their business.
- A fourth question concerns the possibilities for tendering authorities to get reliable *information* concerning convictions for criminal offences. This type of information is gathered in Sweden in the criminal records database (*belastningsregistret*), but this information remains confidential and cannot be used for tendering purposes. In 1998 a new rule has been introduced in Chapter 18 section which states that a tenderer, if special grounds exist, will have the opportunity to replace documentary proof by a sworn statement or some similar assurance (Asp 2000, 330-331).

The rule in section 17, paragraph 4 allowing for exclusion of tenderers who have been guilty of grave professional misconduct, raises other questions. This rule covers cases where the tenderer has infringed rules that govern the business but do not constitute a criminal offence. This point can, however, according to a judgement of the administrative court of appeal, also be used to exclude tenderers who have been involved in criminal activities, but not have been convicted (yet). The section does not oblige the tendering authority to exclude a tenderer in these cases but allows it to do so. (Asp 2000, 332-333)

Although this system can be used to prevent organised crime from entering into public procurement, it does not function as such at present. The main problem is that the tendering authorities lack the necessary information to play a major role. As for now, neither information on criminal records (*belastningsregistret*) nor on suspicion of involvement in crime (*misstankeregister*) is available to tendering authorities. Representatives of the NOU have expressed the view that it would not be inappropriate for tendering authorities to request tenderers to give in excerpts from these registers. Since such excerpts would also reveal offences of no relevance for the procurement in question but which could make the tenderer reluctant to apply for the tender, it has been argued that such a system is contrary to the principles of proportionality and equal treatment (Asp 2000, 335).

Given this limited information flow, the system is considered to be not yet fully effective in the prevention of organised crime. In practice, tendering authorities have very limited access to information which makes it hard to control tenderers when it comes to criminal behaviour and grave professional misconduct.

In any event, representatives of the NOU have expressed doubts regarding the appropriateness of using the rules on public procurement as a means to control and prevent organised crime. The purpose of public procurement regulations was, according to their view, primarily to secure impartial and effective procurement, and this purpose may collide with the purpose of controlling tenderers (Asp 2000, 344).

## 2.4 CONCLUSION

There is growing concern about organised crime and legal sector vulnerability in Sweden. Legal instruments are available that could be used for preventive purposes, but there is as yet no general policy in place to this effect. Discussions are underway, involving also questions of compatibility with EU regulations and privacy rights. One of the central problems lies in information exchange, between agencies within Sweden as well as internationally.

## 3 ESTONIA

### 3.1 ORGANISED CRIME SITUATION IN ESTONIA

Two different theories exist with regard to the origin of organised crime in Estonia (University of Exeter, 2001). On the one hand, it is argued that organised crime essentially has been imported to Estonia from the former Soviet Union and is connected with the centrally directed economic system of that time (Saar 1999, 25).

The second theory suggests that the organised crime in Estonia dates back to the early 1980s when the preparations for the Olympic Games generated an influx of people, construction workers and those who wanted to take advantage of the Games. Crime groups were not very well organised at that time and mainly concentrated on fraud, pick-pocketing, and illegal money exchange (Markina 1998, 47)

However, both sides agree that organised crime spread to Estonia during the subsequent years of perestroika, which significantly increased business opportunities and liberalised the political regime. In the late 1980s, the first private entrepreneurial ventures were set up. The first 'failed' entrepreneurs were followed by rather well organised and economically oriented crime groups. Perestroika in Estonia, the calls for independence in the Baltic Republics and the better living conditions attracted Russian organised criminal groups to Estonia. With them, illegal gambling and racketeering proliferated.

The most significant change in the expansion of organised crime in Estonia was the independence in 1991 and the subsequent commitment to introduce market economy. Estonian organised crime groups were said to start extensive smuggling in precious metals from Russia through Estonia to the West, a phenomenon often labelled as the "Metal Age". Gradually, most organised crime groups shifted to more profitable forms of illegal business, such as different forms of economic crime, tax evasion, and drug smuggling (Markina 1998, 47-48; Rawlinson 2001, 9-13 and University of Exeter 2001). The Council of Europe Organised Crime Situation Report distinguishes two organised crime models in Estonia today. One is the "conservative model", resembling Russian organisations, the second is called the "progressive model" which is directed towards economic crime and has international dimensions (Council of Europe 2002, 100-101).

Saar makes the following observations about recent organised crime developments (Saar 1999, 26):

- organised crime is expanding and diversifying, encompassing new and hitherto unexploited fields
- the organisational capabilities are constantly increasing, ties with international (especially in neighbouring countries) criminal organisations are intensifying
- organised crime activities are constantly becoming more refined and sophisticated, and harder to solve (financial crime, money laundering, etc.). For instance, to money launderers ever increasing opportunities are becoming available for exporting money to tax-free areas via off-shore companies
- the amount of money moving in organised crime circles is constantly increasing and greater efforts are being made to place this money into legal business enterprises and various real estate acquisitions, not only in Estonia, but also abroad
- if initially, from the point of view of international organised crime, Estonia was treated primarily as a transit country, then now, as a result of Estonia's economic development, organised crime circles are evermore making capital investments in Estonia
- to ensure the continuation of their activities and to potentially increase their profits, organised crime is trying to get involved in the governmental structure, both horizontally and vertically, paying special attention to bribing or manipulating in other ways the criminal justice system's employees.

Thus, the organised crime situation in Estonia appears to be changing in a way that it looks more like a "strangely unique business enterprise", requiring special counter-measures (Saar 1999, 26).

### 3.2 ORGANISED CRIME (PREVENTION) POLICY

Estonia is among the pioneers in Central and Eastern Europe in crime prevention and in the development of a National Crime Prevention Council (Joutsen, 1998, 4). Recently, a Strategy for Crime Prevention until the year 2005 (Ministry for Justice Estonia 2002) has been issued focusing on various aspects: more efficient inclusion of the public in crime prevention, more efficient protection of property, increased safety on streets and public places, decrease in criminal offence and crimes committed by young people, better availability of victim assistance and prevention of repeated crimes.

Although this strategy does not mention prevention of organised crime explicitly, some aspects of the goal related to "more efficient protection of property" are mentioned. The first relates to the fight against pirated goods, which has been taken up actively in Estonia during 1998-1999. A number of (legislative) measures have been taken in order to restrict the spreading of pirated goods leading to an increase in the amount of goods discovered and confiscated (1.2.2.). Second, the implementation of measures for the prevention of crimes against the economy is explicitly mentioned:

*"Every year, because of tax evasion, the state does not receive a large amount of money, which could be used for the achievement of other goals set in the strategy. Dealing with tax fraud, the state signals that it does not only condemn thefts and abduction as the most brutal revelations of dishonesty, but it also deplures all kind*

*of dishonesty and greed for property. In other words – the state does not deal with concrete deeds but with human values – with honesty. The precondition for the prevention which is directed towards the securing of values, stipulates that there is a complex approach towards deviations.” (1.2.3.6)*

Next to this, the prevention of organised crime is promoted actively in relation to various Estonian anti-corruption initiatives (Raig 2001), which have been supported and evaluated by the Council of Europe (Joutsen 1998, 5-6 and Greco 2001).

Although, there is no specific instrument in that respect, there is a growing concern amongst practitioners to try to prevent organised crime from entering into the legitimate economy:

*“Moreover, the nature of organised crime is fast evolving and sophisticated, thus necessitating advanced models of combat. Much of economic organised crime still goes unnoticed in Estonia. However, Estonian law enforcement officials have realised that economic measures against proliferating organised crime are most effective.” (University of Exeter 2001)*

### 3.3 EXAMPLES OF PREVENTIVE LEGISLATIVE MEASURES TAKEN

#### 3.3.1 Criminal record database and trade bans

The Estonian Penal Code of 6 June 2001 provides for an ‘occupational ban’ as a supplementary punishment for criminal offences imposed on natural persons. § 49 stipulates:

*“A court may deprive a convicted offender of the right to work in a certain position or operate in a certain area of activity for up to three years if the person is convicted of a criminal offence relating to abuse of professional or official status or violation of official duties.”*

These convictions are kept in the criminal records database (§ 11 Punishment Register Act of 19 November 1997) and accessible to a variety of persons and institutions, including government agencies, employers and notaries for the verification of the data concerning a person applying for an official act (§ 17) (Vermeulen et al. 2002, 61-88). Unlike Sweden, such prohibitions appear to be restricted to criminal convictions.

It is clear that, although currently not used explicitly for that purpose, this system can be used for the prevention of organised crime by excluding convicted criminals from participation in the legal economy such as the disqualification from public tenders (§35 of the Public Procurement Act of 19 October 2000). Other databases such as the tax administration database (ATOS) containing information on criminal activities of natural and legal persons could also be used for that purpose.

According to the persons interviewed, the question remains as to what extent such information exchange between the criminal records database and other agencies is considered to be in accordance with data protection requirements.

### 3.3.2 Licences and permits

Estonian legislation provides that some types of business activities can only be exercised if explicitly licensed or permitted by the competent authorities. According to the Estonian Police, this system can be used to prevent organised criminals to get into the legal business by refusing them a licence or permit. Although the police do not always have a decisive voice concerning all types of licences or permits (e.g. permits issued by the Ministry of Social Affairs), the police can be consulted on this issue or give information spontaneously (if they become aware of the application).

Although such a system is considered to be effective, it sometimes lacks a specific legal basis. Until today, administrative authorities' decisions denying a permit or licence have all been accepted and have not been challenged in court. It is however suggested to provide for more explicit legislation allowing for this kind of disruption of potential organised crime.

## 3.4 CONCLUSION

There is modest but growing concern about organised crime and about the vulnerability of the legitimate business sector to such 'invasion'. However, the primary focus in Estonia is on ensuring internal integrity by anti-corruption measures, without which measures against external offenders – including the development of preventative measures such as permits are unlikely to be successful or socially acceptable.

## 4 THE NETHERLANDS

### 4.1 THE ORGANISED CRIME SITUATION IN THE NETHERLANDS

In 1994, a Parliamentary Inquiry Committee into Criminal Investigation Methods concluded that an accurate description of the organised crime situation in the Netherlands was lacking. Therefore, the Committee tasked an external group to make an inquiry into the nature, seriousness and scale of organised crime in the Netherlands. After the publication of its report in 1996 (Dutch Parliament 1996), the Minister of Justice promised to report periodically on the nature of organised crime in the Netherlands. Consequently the Research and Documentation Centre of the Dutch Ministry of Justice started the so-called 'WODC-monitor on organised crime', an ongoing systematic analysis of closed investigations of criminal groups. The aim of this was to increase the learning capacity of the criminal justice system and to construct a sound basis for preventive and repressive organised crime policy (Kleemans et al. 1998, 137)

The first report (Kleemans et al. 1998, 123-136) presented *inter alia* the following conclusions and policy implications:

- *Criminal networks*: Organised crime is marked by criminal networks which turn out to be less pyramid shaped, less stable, and far more fluid than the traditional bureaucratic model. In consequence it would be more useful to focus law enforcement efforts on a frequent use of short-term, prompt intervention strategies, rather than on long-term investigations involving special investigative techniques.
- *Social relationships*: Social relationships often follow the laws of social and geographical proximity: the closer offenders live together, the more ground



their daily activities have in common, and the less social distance exist between them, the more probable it is that ties emerge between these offenders. Ethnicity affects social relations but is not the key defining feature of the criminal groups analysed, as many of the groups are comprised of individuals with various ethnic backgrounds. Furthermore, the traditional view that certain ethnic groups are specialised in particular kinds of drugs should be reconsidered.

- *Interfaces between organised crime and its legal environment:* There are numerous interfaces between organised crime and its legal environment. Many forms of organised crime simply cannot survive without the support of the legal environment. Many forms of organised crime are highly dependent upon the presence of consumers. The legal environment also facilitates organised (and unorganised) crime, as criminal networks take advantage of the opportunities offered by society's regulating infrastructure. These interfaces could be used as a primary target for preventing and fighting organised crime by diminishing the opportunities offered by the legal environment and by increasing supervision and control.
- *Confrontation with the authorities:* Counter-strategies are probably intended more as a defence mechanism. Although they are sometimes very serious in nature, it is doubtful whether such incidents herald the development of a dangerous new trend in organised crime. However, more attention should be paid to evasive strategies aimed at avoiding confrontation with the authorities.

The second report (Kleemans et al. 2002, 139-157) concludes along the same lines:

- *Transit-crime:* Most organised crime cases in the Netherlands are transnational and related to smuggling (persons, drugs, cars, fraud, etc.). Organised crime groups use existing flows of goods and money. It is very unlikely that organised crime groups actually control economic sectors.
- *Criminal networks:* Again, pyramid-shaped bureaucratic models of criminal groups are considered to be the exception rather than the rule. However, this does not mean that there is no structure, hierarchy or dependency in these groups.
- *Relationship between criminal networks and law enforcement:* Many perpetrators act in a grey zone between legal and illegal activity and do not perceive themselves as criminals. As a consequence some networks seem to act as they are invulnerable. This limited shielding of their activities facilitates law enforcement intervention.

The 2002 EU Organised Crime Report (Europol 2002, 68) provides a compatible description:

*"[...] The Netherlands is mainly a transit country where it concerns trafficking in drugs (with the exception of soft drugs), migrant smuggling and the smuggling of cigarettes. The Netherlands appears to be appealing as a transit country because of its favourable location and ideal infrastructure in many areas.[...]"*

## 4.2 ORGANISED CRIME (PREVENTION) POLICY

Since the early 1980s, organised crime achieved headline status in the Netherlands as the media started to increase their focus on the phenomenon. Policy plans at the time considered organised crime a major threat to Dutch society, requiring a (mainly repressive) response (Fijnaut 2002, 19).

By the end of the 1980s and influenced by the work and achievements in New York (Fijnaut and Jacobs, 1991, developed further in Jacobs, 1999) the Dutch thinking about organised crime changed as policy makers became convinced that this type of crime could be countered via a preventive administrative route as well as by a repressive criminal justice route.

Consequently, the anti-organised crime policy plan presented by the Ministries of Justice and of the Interior of 1992 called the administrative approach toward organised crime as important as the criminal justice approach. The two most important tasks attributed to the public administration in this context were as follows:

- Firstly, every means should be devoted to ensuring the integrity of the civil service apparatus whereby its integrity is considered to be the prerequisite for the effective combating of organised crime, meaning greater awareness, transparent allocation of tasks, tighter procedures for the awarding of grants, enhanced controllability of action and prevention of conflicts of interest.
- Secondly, the public administration must be more aware of the fact that criminal networks increasingly use legal enterprises whereby, at a given moment, they are dependent on the government, in particular where it concerns obtaining and operating permits, the outsourcing of work and the awarding of projects.

Subsequently, the Ministry of the Interior set up an entire campaign to convince all levels of the administration of the importance of integrity in their activities. In parallel, scientific research was funded to examine how far the existing legislation on environment, construction and tendering was compatible with an administrative approach towards organised crime. A conclusion of this study (Struiksmā and Michiels 1994) was that there was already a range of possibilities, notably in having audits by an external agency and in consulting criminal records for information as possible grounds for refusing or withdrawing a permit. However, the report continued that these options are not sufficient to hinder criminal organisations in their economic activity. The main reason here was that while permits can, for example, be refused on the basis of involvement in crime, including future crime, these suspicions must be backed up with reliable evidence, checkable by the applicant and by a court. The report's most important recommendation was that it would be desirable to set up a special agency, with legal status and powers to vet applications for permits, tender proposals etc. on the basis of all types of databases, and with the power to require companies to cooperate with the agency's investigations (Fijnaut 2002, 20).

Especially in Amsterdam, several initiatives were taken regarding the prevention of organised crime by using an administrative approach:

- A first example of this is the establishment of the *Screening and Auditing Bureau* of the City of Amsterdam (SBA) in 1998. Around 1990 the city government of Amsterdam drafted the first blueprint for a new metro line

for an estimated cost of €0.73 billion. Given the discussion at that time about infiltration by criminal organisations into bona fide companies and their gaining a grip in the governmental apparatus via tendering, a project group was established comprising the City Transport Department and the police. The task of the police was to determine or prevent construction companies or holdings from obtaining city funding in the event that they had any sort of links with criminal organisations. After the construction plans were presented in 1994 and the project group – which was then renamed “steering group” – had visited New York and Rome, it became clear that a number of conditions had to be fulfilled before a prequalification procedure could work properly. Furthermore, the steering group studied European Directive 93/37 on public works and 93/38 on utility sectors and concluded that both *de facto* and *de jure*, governments have considerable scope to accept or decline tenders on economic grounds, where given subscribers are concerned, but that excluding companies from tenders is more problematic as grounds for that are limited under Directive 93/37. In October 1995, detailed recommendations for a screening procedure were made, and it was proposed to set up a special agency under the direct authority of the mayor to carry this out, in close cooperation with the police, public prosecution service, tax authorities and other municipal services. In 1998 SBA commenced its operations (Fijnaut 2002, 21-22) and operates now according to a standardised methodology (see on this van der Wielen 2002, 59-72).

- Another example of the administrative approach towards organised crime in Amsterdam is the so-called “Wallen”-project. Next to a general action plan on organised crime in the city, the City Council asked the city executive in June 1996 to develop an additional policy for the red light district (*Wallen*). First a specific programme was needed to ensure integral and integrated upholding of regulation in that area. Second, the Council called for the appointment of a special manager for the district. The manager has the task to cluster administrative instruments to enhance the combating of criminal penetration in the Wallen district. Sub-projects have been carried out related to a better municipal property registration, grey premises (determine what is happening behind the front door with a view to regularisation), urban renewal, rapid purchase of premises (a purchase protocol empowers the Wallen manager to buy premises which are badly managed or are at a highly sensitive location and that threaten to fall into the hands of dishonest persons), screening of permit applications for criminal links etc. In 1999 it was decided to continue the project and to include the co-ordination of the (77) activities proposed by the general action plan of the city (the so-called Van Traa-activities, named after the chairman of the Parliamentary Inquiry Committee into Criminal Investigation Methods). As the Wallen are no longer the sole territory of the project, the team was brought under the Amsterdam Public Administration Department and is named the “Van Traa-team” (Köbben 2002, 73-95).

## 4.3 EXAMPLES OF PREVENTIVE LEGISLATIVE MEASURES TAKEN

### 4.3.1 Facilitation of integrity-assessments by public administration (BIBOB)

On 18 June 2002, the Dutch Parliament passed the so-called “BIBOB” law (**B**evordering **I**ntegere **B**esluitvorming **O**penbaar **B**estuur or facilitation of integrity assessments by public administration).

The purpose of the BIBOB law is to facilitate the work of the public administration when assessing the integrity of applicants for public facilities, and simultaneously to protect their own integrity. To this purpose the law increases access to judicial, financial and police information and provides grounds to reject or refuse licences or subsidies. As tendering authorities are bound by European Standards on tenders, the law does not provide explicitly for new grounds for refusal or rejection of public tenders. However, on the basis of BIBOB-advice, public authorities can substantiate the enforcement of grounds for refusal that are compatible with European Standards.

The law establishes a central BIBOB-office as a part of the Ministry of Justice, which can report directly to the Minister. Within the Directorate of Administrative Affairs, the bureau is joined with other departments specialised in the screening of persons and legal public entities. The office has to execute two tasks:

- *Advice to authorised local authorities:* At the request of authorised local authorities, the BIBOB-office investigates the integrity of applicants for licenses and subsidies. In order to do so, the office has access to numerous sources of judicial, financial and police information. With the results of this investigation, the office assesses the risks and likelihood that the applicant will abuse the required facility. These findings are formulated in a written advice to the public body. In this advice the office indicates the severity of the situation: whether the threat of abuse of public facilities through exploitation of criminally obtained money or commission of a criminal offence is considered very serious, serious or not serious. Advice of the office is not binding and authorities can decide not to follow the advice given. In the BIBOB procedure, the public prosecutor has various roles. As the interest of criminal proceedings prevails over BIBOB, the prosecutor can forbid the use of information for a BIBOB-advice if that information will be used in a criminal case. Therefore, each BIBOB-advice is assessed by the prosecutor. In some cases the BIBOB office has to give a positive advice, if the information to substantiate a negative advice cannot be used. However, the law leaves the opportunity to use the information later. Another role of the prosecutor is that of an informer. In consultation between police, mayor and prosecutor he can suggest to the mayor to ask for a BIBOB-advice in a specific case.
- *Coaching of public bodies who want to make use of the possibilities the BIBOB law offers:* Besides its investigative tasks, the BIBOB-office is legally obliged to inform authorised bodies on the purpose and application of the BIBOB law.

The BIBOB-law is a subsidiary law. Before applying this new legal instrument public bodies should first use other means available. Especially with respect to the catering industry, sex industry and coffee shops, public bodies already have access to sources of information and grounds for refusal or rejection. The instruments enable them to make a balanced decision whether to grant or refuse licenses. Only when these existing means fail is application of BIBOB justified. To be able to use

BIBOB, public bodies have to make (organisational and policy) preparations within the organisation. Integrated local cooperation between municipality, police and justice makes it easier to implement and apply the instrument efficiently.

The application of the bill is limited in two ways. In the first place its scope is restricted to licenses, tenders and subsidies. Secondly, the instruments can only be used for certain legal sectors. Regarding licenses, the system only applies to the hotel and catering industry, the construction industry, the transport of goods and persons, the sex industry, coffee shops, environment (processing of waste), house corporations (selling of properties) and – as called in the Netherlands – opium permits. These permits regard the transportation and possession of opiates for medical use. In respect to tenders, the law applies to the construction industry, environment and information and communication technologies. For subsidies, no branches will be selected. As long as it is in accordance with the principles of subsidiarity and proportionality the statutory regulation of a subsidy can declare the BIBOB-law applicable.

In the discussion about BIBOB and other Dutch screening systems, the issue of privacy has been highly debated. Although the BIBOB-law explicitly deals with the privacy aspect, some consider this legislation a step too far and not in accordance with the subsidiarity principle of Article 8 ECHR (NJCM 2001, Van Stratum and Van de Pol 1999). As in other countries, questions arise of the validity of information, to the extent that it may rely on unconfirmed allegations in police intelligence files, and of appeal procedures.

#### 4.3.2 Supervision of natural and legal persons

The Preventive supervision of companies division (PTV) of the Bureau integrity department (AIB) and the Legal persons division of the central organisation for certificates concerning “good conduct” (COVOG) are divisions of the Administrative Affairs Directorate. Both organs are involved in the integrity of natural and legal persons.

The PTV division places particular emphasis on preventive supervision of companies, whilst COVOG’s supervision is more repressive in nature. The PTV is involved in preventing the abuse and improper use of public and private limited companies.

- When the Judicial Data Act comes into force in 2003, COVOG will issue certificates concerning “behaviour” for natural and legal persons. These persons will be able to use these statements to prove that no relevant criminal data were found, following investigations linked to the reason for which an application has been submitted. For this investigation COVOG will consult a limited number of judicial and/or financial sources in connection with the issue of these statements. Only data that is registered in the Netherlands will be included in the investigation.
- The PTV division makes use of a system to assess applications for a certificate of no objection by setting up of limited companies or when their statutes are changed. The data processed in the system involve the identity of the limited company that is being set up. In addition data will be processed that involve natural and legal persons who are (assisting) in setting up the company. All bankruptcies and suspensions of payments pronounced by courts will be incorporated as well. A private company information-supplying division (VIV) of AIB can provide financial and investigative agencies and supervisory authorities (police, tax, ...) with data from the system. At the

request of an investigative agency or supervisory authority, the VIV can also include a warning in the system. In 2003 new legislation on documentation for limited companies is expected to give PTV and VIV wider powers. The VIV division, for example, would then be allowed to actively provide investigative agencies and supervisory authorities with information. The PTV division is expected to be given the opportunity of consulting more sources such as information obtained from the person requesting the certificate of no objection, the trade register, the files required for implementing preventive supervision, public statutory registers, public information, the central judicial documentation, the Implementation Institute for Employee's Insurance, data from the national tax office, data from police registers, data from the Dutch competition authorities, data from other financial and police investigative authorities.

#### 4.4 CONCLUSION

The approach of the Netherlands has become the most extensive one in Council of Europe member States to prevent organised crime. Detailed research has fed into specific action plans, which have been applied first in part of Amsterdam and then in the country as a whole. So rather than ad hoc measures of prevention, this has become embedded in a systematic, considered analytical framework, whose preconditions are administrative integrity, good data protection, and the willingness of parties to include information in databases and act co-operatively. The latter are issues for every country, and it remains to be seen how well a system which was developed in Amsterdam over a long period of time and in which parties developed strong interpersonal relationships of trust would succeed in a different environment involving people who work less regularly with each other.

### 5 OVERALL CONCLUSIONS

There is no single uniform approach to the prevention of organised crime. Different societies have different appetites for social and entrepreneurial risk, and in the real world, they also have different levels of reliance on the integrity of their public institutions. Countries in transition may be in need of some greater efforts at organised crime prevention to deal with economic and organised crime more effectively than through classical criminal justice crime repression alone.

However, bureaucratisation in the prevention of economic and/or organised crime *can* in some societies lead to the over-inhibition of precisely the local small and medium-sized private enterprise most needed for the development of a flourishing indigenous private sector. As an undesirable side-effect, multi-layered stages of controls can also be used as an instrument to extort funds from large and small businesses in order to obtain permits to take part in enterprise. These are balances to be struck, and as seen in this report, countries at an advanced stage of economic development (the Netherlands and Sweden in this survey, and one may add the UK for more divergent practices) have different priorities and focuses: Sweden is less of a magnet for drugs and sex tourism than the Netherlands. What should be noted here is the way that controls over economic crime risks intersect with those over 'organised crime' as conventionally viewed.

All three member States recognise the importance of prevention of organised crime, and use their existing legislation to act against these risks:

Estonia, reflecting its own history and stage of economic development, has the least explicit policy approach to prevention, but has demonstrated the scope for

action within its existing legal framework; Sweden is focused particularly upon economic abuses against the tax system and has developed a sophisticated set of measures to combat this; while the Netherlands has the most wide-ranging and comprehensive approach to 'traditional' conceptions of organised crime risks.

Privacy and data protection issues, and the EU requirement to ensure a level playing field and open competition for business do inhibit the development of prevention approaches: though crime prevention is a valid legal reason for data sharing, policy differences between enterprise ministries and crime control ministries can inhibit preventative action.

The example of the Netherlands points at the importance of linking the whole prevention process to internal integrity, and shows the complexity of the issue and the difficult balancing exercise between organised crime prevention and privacy. Though pragmatically useful, the use of agency 'intelligence' is especially controversial, since it may not have been tested in any adversarial proceedings, and the suspected offenders who in consequence are excluded from exercising 'normal' rights may not have had the opportunity to refute the allegations. In repressive hands, such approaches can be abused or even become the tools of extortion by public authorities, sometimes in league with external criminals.

Nevertheless, such approaches do offer greater potential than criminal justice measures for crime prevention, by reducing the situational opportunities of higher risk offenders. Although there has been no sustained evaluation as yet on the effects of these strategies on (a) levels of crime and (b) the organisation of crime<sup>5</sup>, these illustrations can be recommended for consideration by member States as examples of thinking about crime reduction beyond largely tactical 'repressive' criminal justice measures.

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<sup>5</sup> The Dutch Amsterdam experiments are currently under research evaluation. For wider consideration of the issues, see the forthcoming Special Issue of *Crime, Law and Social Change* including M. Levi and M. Maguire 'Reducing organised crime: an evaluation of national and international approaches'; H. Nelen 'Hit them where it hurts most: the proceeds of crime approach in the Netherlands', and T. Vander Beken 'Risky business: a risk-based approach to measuring organised crime'.

## 6 REFERENCES

ASP, P., 'Sweden', in S. White (ed.), *Procurement and Organised Crime. An EU-wide study*, London, Institute for Advanced Legal Studies, 2000, 327-345.

BROTTSFÖREBYGGANDE RÅDET, *Organiserad brottslighet – Lösa maskor eller fasta nätverk*, Stockholm, Forsknink om Ekonmisk Brottslighet, 2002.

COUNCIL OF EUROPE, *Organised Crime Situation Report 2001*, Strasbourg 2002 (confidential).

COUNCIL OF EUROPE, *The Prevention of Corruption in Central and Eastern Europe (Octopus Programme – Report on the regional seminar on the prevention of corruption, Bratislava, 19 – 21 November 2001)*. Strasbourg 2002.

COUNCIL OF EUROPE, Recommendation Rec(2001)11 of the Committee of Ministers to member states concerning guiding principles on the fight against organised crime (*Adopted by the Committee of Ministers on 19 September 2001 at the 765<sup>th</sup> meeting of the Ministers' Deputies*), Strasbourg 2001.

DUTCH PARLIAMENT (Parlementaire Enquêtocommissie Opsporingsmethoden), *Inzake Opsporing*, The Hague, Sdu Uitgevers, 1996.

EUROPOL, *2002 EU Organised Crime Report*, The Hague 2002, non-classified version.

FIJNAUT, C. and JACOBS, J. (eds.), *Organised Crime and its Containment: a Transatlantic Initiative*, Deventer, Kluwer Law and Taxation, 1991.

FIJNAUT, C. (ed.), *The administrative approach to (organised) crime in Amsterdam*, Amsterdam, Public Order and Safety Department, 2002

FIJNAUT, C., 'The administrative approach to organised crime in Amsterdam: background and developments', in FIJNAUT, C. (ed.), *The administrative approach to (organised) crime in Amsterdam*, Amsterdam, Public Order and Safety Department, 2002, 15-30.

GRECO, *Evaluation Report on Estonia*, Council of Europe, 2001, Greco Eval I Rep (2001) 7E Final.

JACOBS, J.B., *Gotham Unbound: How NYC Was Liberated from the Grip of Organized Crime*, New York, University Press, 1999.

JOUTSEN, M., *Corruption and Organised Crime in States in Transition (Octopus). Final recommendations and guidelines for action addressed to the Government of Estonia*, Strasbourg 1998, Octopus(98)5.

JUSTITIEDEPARTEMENTET, *Branschsanering – och andra metoder mot ekobrott*, Stockholm, Statens offentliga utredningar, 1997.

KLEEMANS, E.R., VAN DEN BERG, E.A.I.M and VAN DE BUNT, H.G., *Georganiseerde criminaliteit in Nederland. Rapportage op basis van de WODC-monitor*, The Hague, Wetenschappelijk Onderzoek- en Documentatiecentrum Ministerie van Justitie, 1998.



KLEEMANS, E.R., VAN DEN BERG, E.A.I.M and VAN DE BUNT, H.G., *Georganiseerde criminaliteit in Nederland*. The Hague, Wetenschappelijk Onderzoek- en Documentatiecentrum Ministerie van Justitie, 2002.

KÖBBEN, A.-C., 'The Wallen project', in FIJNAUT, C. (ed.), *The administrative approach to (organised) crime in Amsterdam*, Amsterdam, Public Order and Safety Department, 2002, 73-95.

KORSELL, L., 'Three Decades of Researching and Combating Economic Crime – the Swedish Case', in LINDGREN, S.-A. (ed.), *White-Collar Crime Research. Old Views and Future Potentials*, Stockholm, The National Council for Crime Prevention, 2001, 91-106.

KORSELL, L., 'Sweden', in ALBRECHT, H.-J., KILCHLING M. and BRAUN E. (eds.), *Criminal Preventive Risk Assessment in the Law-Making Procedure*, Freiburg im Breisgau, Max-Planck-Institut für ausländisches und internationales Strafrecht, 2002, 259-300.

MANUNZA, E., *EG-aanbestedingsrechtelijke problemen bij privatiseringen en bij de bestrijding van corruptie en georganiseerde criminaliteit*, Kluwer, 2001.

MARKINA, A., 'On Profiling Organised Crime in Estonia', *Organised Crime & Crime Prevention – what works?*, Scandinavian Research Council for Criminology, 1998, 46-53.

MINISTRY FOR JUSTICE ESTONIA, *State Strategy for Crime Prevention until the year 2005*, 2000, [http://www.just.ee/new\\_index.php3?cath=2047&id=39](http://www.just.ee/new_index.php3?cath=2047&id=39)

NJCM, 'NJCM-commentaar op het concept wetsvoorstel bevordering integriteitsbeoordelingen door het openbaar bestuur (BIBOB)', *NJCM-Bulletin*, 2001, nr. 2, 266.

NORDSTRÖM, P., *Co-operation on Law Enforcement*, Third Annual Conference of Commerce Registers of Europe, Cardiff, October 2000.

NOU (Nämnden för offentlig upphandling), *A Brief Description of the Public Procurement Act in Sweden and the National Board for Public Procurement*, <http://www.nou.se/english.html>

PRV BOLAG, PATENT- OCH REGISTRERINGSVERKET, *PRV. Trade and Industry Register*, s.l.n.d.

PRV BOLAG, PATENT- OCH REGISTRERINGSVERKET, *Forms of Business Enterprise. What is the best form of enterprise for me and my business concept?*, s.l.n.d.

PRV BOLAG, PATENT- OCH REGISTRERINGSVERKET, *At the Service of Trade and Industry*, s.l.n.d.

RAIG, U., 'Estonia' in VANDER BEKEN, T., DE RUYVER, B. and SIRON N. (eds.), *The organisation of the fight against corruption in the Member States and candidate countries of the EU*, Antwerp-Apeldoorn, Maklu Publishers 2001, 115-159.

RAWLINSON, P., *Russian Organised Crime and the Baltic States: Assessing the Threat*, Working Paper ESRC "One Europe or Several?" Programme, University of Sussex, 2001.

SAAR, J., *Criminal Justice System and Process of Democratization in Estonia*, Nato Democratic Institutions Research Fellowship Final Report, Tallinn, 1999.

STRUIKSMA, J. and MICHIELS, F., *Gewapend bestuursrecht: een onderzoek naar de mogelijkheid om misdadige activiteiten te bestrijden met behulp van de regelgeving op het gebied van bouwvergunning, de milieuvergunning en de aanbesteding*, Zwolle, Tjeenk Willink, 1994.

UNIVERSITY OF EXETER, *Organised Crime in the Baltic Sea Area: The Cases of Russia, Estonia, and Finland*, 2001,  
[http://www.ex.ac.uk/politics/pol\\_data/undergrad/jaakko/homepage.htm](http://www.ex.ac.uk/politics/pol_data/undergrad/jaakko/homepage.htm)

VAN DE POL, U. and VAN STRATUM, M., 'Privacy regulations around processing of personal data for the administrative approach to organised crime', in FIJNAUT, C., (ed.), *The administrative approach to (organised) crime in Amsterdam*, Amsterdam, Public Order and Safety Department, 2002, 51-58.

VAN DER WIELEN, L., 'The screening and auditing approach in combating crime', in FIJNAUT, C., (ed.), *The administrative approach to (organised) crime in Amsterdam*, Amsterdam, Public Order and Safety Department, 2002, 59-72.

VAN HEDDEGHEM, K., VANDER BEKEN, T., VERMEULEN, G. AND DE RUYVER, B., *Gewapend bestuursrecht gescreend*, Antwerp-Apeldoorn, 2002.

VAN STRATUM, M. and VAN DE POL, U., 'Screening op integriteit: BIBOB gewogen en te licht bevonden', *Nederlands Juristenblad*, 26 November 1999, 1965-1973.

VERMEULEN, G., VANDER BEKEN, T., DE BUSSEER, E. and DORMAELS, A., *Blueprint for a n EU Criminal Database. Legal, politico-institutional & practical feasibility*, Antwerp-Apeldoorn 2002.

WHITE, S., (ed.), *Procurement and organised crime. An EU-wide study*, London, Institute for Advanced Legal Studies, 2000.

## 7 PERSONS AND INSTITUTIONS CONSULTED

### SWEDEN

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- Michael Nilsson, researcher

#### **Swedish Patent and Registration Office**

- Per Nordström, Chief Lawyer

#### **National Board for Public Procurement**

- Margareta Hentze, Director
- Michael Slavicek, Head of Legal Service

#### **National Criminal Investigation Department, National Criminal Intelligence Service, Analysis Unit**

- Johan Falkman, Senior Analyst
- Elisabeth Pihlgren, Analyst
- Asa Hedin, Detective Inspector/Analyst

### ESTONIA

#### **Ministry of Justice**

- Ülle Raig, Legal Adviser Penal Law Department
- Anu Leps, Crime Prevention Division, Head of Division

#### **Estonian Police Board**

- Risto Kasemäe, Crime Department, Intelligence Support Unit, Chief Superintendent
- Dorel Käosaar, Foreign Relations Department, Senior Inspector
- Arnold Tenusaar, Crime Department, Money Laundering Information Bureau, Detective Chief Superintendent

#### **Central Criminal Police**

- Märt Palo, Deputy Police Director

#### **Estonian Customs Board**

- Arvo Taar, Head of Intelligence Division, Customs Enforcement Department

### THE NETHERLANDS

#### **Ministry of Justice**

- Victom Jammers, Head of the Department of Crime Prevention
- Jan Lely, Senior Policy Adviser, Co-ordinator of the Programme for the Prevention of Organised Crime
- Eva Kruiemel, Strategisch Analist, Directie Bestuurszaken, Afdeling Integriteit Bedrijfsleven/Vennoot Inlichtingen Bureau,
- Jack Burger, Projectleider, Directie Bestuurszaken, Centraal Orgaan Verklaring Omtrent Gedrag i.o.
- Jacqueline Hoogendam, DGPJS/DJC

**City of Amsterdam**

- Leo van der Wielen, Manager, Bureau Screenings- en Bewakingsaanpak (SBA)
- Kees Lacet, teamleider Van Traa team/Wallenproject

**Universities**

- Wim Huisman, assistant professor of Criminology, Vrije Universiteit Amsterdam
- Cathelijne van der Schoot, AIO, Erasmus University of Rotterdam