



The EU response to organised crime

SUMMARY *Both in the EU and elsewhere there is a strong consensus amongst states that combating organised crime requires common action. Therefore the EU's policies have evolved in the context of manifold international efforts to tackle this threat. The EU has both co-drafted and drawn on international laws and standards.*

Whereas the need to define "organised crime" was the starting point of the debate, no commonly accepted definition has so far been found. The EU's 2008 Framework Decision, which used a compromise definition based on diverse legal traditions, has been widely considered a failure.

While the EU's anti-organised crime policy is quite comprehensive, most relevant actions have been under the legal bases for police and judicial cooperation in criminal matters. Europol's mandate is one indicator of how far the EU has been allowed to go by the Member States in dealing with crime.

The Amsterdam Treaty (1997) provided a legal base for approximating criminal legislation, including that on organised crime. The Treaty of Lisbon (2009), with its overhaul of the entire EU architecture, substantially strengthened the EU's standing in this field. Serious and organised crime has been perceived as a severe threat to EU security, and as such has been addressed in recent years within a specific policy cycle.

In this briefing:

- An ongoing fight
- The international context
- EU laws, policies and institutions
- After Lisbon
- The European Parliament's position
- Main references

An ongoing fight

The problem of organised crime has been dealt with through EU-level instruments in a series of initiatives since the early 1990s. New developments were in some cases sparked by dramatic incidents raising public outcry across national borders, as was the case with the murders of prosecuting magistrates Paolo Borsellino and Giovanni Falcone by Sicilian mafia.

As policy evolved, so did the EU's official discourse. In recent years, the use of the term "organised crime", once predominant, has declined in favour of "serious crime". This change marks a shift of focus from the structure of criminal groups to the harm they inflict on individuals and societies.

This new vocabulary and policy approach illustrate attempts by academics, law-enforcement agencies and policy-makers to grasp the ever-changing nature of crime. The change does not suggest, however, that the transnational activities of organised criminal groups are decreasing. On the contrary, crime syndicates continue to thrive on globalisation, making full use of open borders and free trade.¹ Their structure and *modus operandi* continually take new forms, rendering existing policy measures obsolete.

As the term of office of the Parliament's [Special Committee on Organised Crime, Corruption and Money Laundering](#) comes to an end, a new chapter is being written in the



© Vladislav Kochelaevs / Fotolia

history of the EU's fight against organised crime.

The international context

Synergies in tackling organised crime

Besides the EU, the United Nations (UN), the Council of Europe, the G8 and the OECD are among other organisations to have addressed transnational organised crime. The EU's connection to their initiatives has been twofold. On the one hand, the EU has actively taken part in drafting international anti-organised crime instruments; on the other hand, its own laws and policies have drawn inspiration from them.

This relationship may be illustrated by the 2000 [UN Convention against Transnational Organised Crime](#) (the Palermo Convention). While the Convention drew on some essential elements of the 1998 Council's [Joint Action](#) (see below), it then became the world's tool of reference in the field and as such was implemented in EU law.

The same may be said of international anti-money laundering (AML) efforts. In this area the [recommendations](#) of the [Financial Action Task Force](#) (FATF) have arguably become the most widely acknowledged standards. As an FATF member, the European Commission has taken part in drafting them. At the same time the EU AML Directives have incorporated the successive revisions of the FATF recommendations into EU law.

The EU's reliance on international standards leads to EU laws and policies being aligned to a large extent with those of third countries – Europe's potential or actual partners in combating transnational crime. It is argued however that following global trends has led to over-emphasis on certain forms of crime (such as drug trafficking, money laundering and terrorist financing), while others are neglected, including corruption, corporate crime and environmental crime. Such policy choices are said to be linked to political

environments and professional interests, rather than the actual weight of crimes concerned.²

A problematic definition

The definition of the conduct to be criminalised is both an essential element of anti-organised crime instruments and a formidable challenge for legislators. The difficulty lies in the diversity of activities carried out by criminal groups, and in differences in their structure (while some of them are highly hierarchical, others are very loose and flexible).

At international level, a search for a "common denominator" is further complicated by differences in national criminal law. In the EU there are basically three types of approach to criminalising organised crime:

- Civil law approach which consists of criminalising participation in a criminal association,
- Common law approach based on conspiracy, i.e. an agreement to commit a crime, and
- Scandinavian approach, rejecting "criminal organisation" offences and relying instead on the general provisions of criminal law (e.g. complicity, aiding and abetting).

Even within the same approach, Member States (MS) have adopted very different definitions of organised crime. For example, the famous [Article 416-bis](#) of the Italian Criminal Code dealing with mafia-type associations is of a nature unknown to many other civil law countries.³

Considering those differences, the 1998 Council [Joint Action](#) – which formulated the first definition of organised crime in international law – proposed a compromise solution taking into account various legal traditions. MS thus had the possibility of criminalising either active participation in a criminal organisation, or an agreement (conspiracy) to commit crimes, even in cases when the person has not taken part in their

actual execution. This so-called "double model" (or "dual approach"), still maintained by EU legislation, has influenced the wording of the [Palermo Convention](#).

EU laws, policies and institutions

Criminal activities touch upon various areas of life, take many forms and may originate from or reach outside the EU as much as inside it. Therefore, the EU's response had to be comprehensive while staying within the boundaries set by the treaties. What facilitated action at EU level was the consensus among MS on the need for common efforts in this field.

Since the 1990s, action plans and strategies have thus been elaborated either targeting organised crime in general⁴ or dealing with its particular forms, such as drug-related offences and trafficking in human beings. Moreover, the problem has been addressed within the EU's foreign policy and accession strategy, e.g. in respect of actions required of candidate countries. Most of the relevant initiatives however have been undertaken as part of police and judicial cooperation in criminal matters.

Police and judicial cooperation in criminal matters

The treaty provisions on police and judicial cooperation in criminal matters have a double source: they evolved from informal meetings of MS' interior ministers and from inter-governmental relations under the Schengen agreement. Issues pertaining to organised crime came to prominence in these fora and various informal bodies were established, whose remit often covered both organised crime and terrorism.

Whereas the Treaty of Maastricht was silent on organised crime, the Amsterdam Treaty provided for the possibility to approximate criminal legislation in this field (Articles [29](#) and [31\(e\)](#) TEU). Furthermore, it introduced framework decisions as an instrument for aligning national laws.

The approximation of organised crime laws not only has an impact on the level of protection against this form of crime throughout the EU, but it is also important for other criminal law instruments. This is because participation in a criminal organisation is considered an aggravating circumstance for other crimes. Moreover, it is one of the so-called "predicate offences" which trigger the application of EU anti-money laundering directives. Furthermore, it has a bearing on the operation of the principle of mutual recognition, the cornerstone of cooperation in criminal matters in the EU (the "dual criminality" test does not apply to organised crime offences).

Considering the above, expectations were high when the [Council Framework Decision on the fight against organised crime](#) (FD) was adopted in 2008. The FD replaced the 1998 [Joint Action](#) and built on the 2000 [Palermo Convention](#). It modified the definition of a criminal organisation introduced by the Joint Action. It retained however the "double model" of criminalising organised crime, rejecting the Commission proposal which provided for a "single model" without the "conspiracy" option. The reason was that unanimity was required in the Council, which, it is argued, called for complex compromises.⁵

The FD has met with strong criticism from various quarters. The Commission went as far as to make a formal [statement](#), seconded by France and Italy, that the FD did "not achieve the objective of the approximation of legislation on the fight against transnational organised crime as provided for in the Hague Programme". It is argued in this connection that the FD's provisions are so broad and flexible that they may lead to an over-extensive criminalisation. Moreover, most MS did not even have to change their legislation to formally comply with it. Indeed, the impact of the FD on aligning relevant national laws is considered to have been very limited.⁶

Europol

Several EU agencies have been set up to deal with cross-border crime in the EU, including [Europol](#), [Eurojust](#) and [CEPOL](#). Among them, [Europol](#) has arguably played the leading role in tackling transnational organised crime. The EU police agency has two main, distinct tasks:

- Collecting, analysing and disseminating information and intelligence. Since 2006 this has involved publishing Organised Crime Threat Assessments (OCTAs) now replaced with Serious and Organised Crime Threat Assessments (SOCTAs).⁷
- Facilitating bilateral and multilateral cooperation between MS, with Europol itself having no autonomous investigative powers.

To fulfil these tasks Europol relies on MS' willingness to share information and intelligence, and cooperate on specific cross-border investigations (e.g. through participation in so-called [joint investigation teams](#)). Many MS still seem reluctant to make use of Europol in either way.

Europol's mandate has been gradually extended. While under the 1995 [Europol Convention](#) there had to be "factual indications that an organised criminal structure [was] involved", the 2009 [Europol decision](#) broadened it to cover "serious crime affecting two or more MS".

This has led some commentators to argue that organised crime has become less important for Europol's work. Others however consider it as invariably central to Europol's mandate, pointing to the fact that it has been singled out as the first among the forms of serious crime covered.⁸

In general, the Agency's mandate has been a hotly debated topic since its inception. Whereas voices have been raised in favour of creating a fully-fledged European police force ("[the European FBI](#)" scenario), proposals to grant Europol executive powers have invariably met with resistance at the Council. Moreover, any debate on

new competencies has led to questions on democratic oversight and civil liberties. As to Europol's analytical tasks, arguments in favour of enhanced interoperability of its databases are counterbalanced with data protection concerns.⁹ Europol's mandate is again under discussion with the [proposed new regulation](#) to bring it into line with the Lisbon Treaty.

After Lisbon

The Lisbon Treaty provisions

The [Lisbon Treaty](#) has opened new paths for the approximation of national criminal laws in the EU including in respect of organised crime.

[Article 83\(1\) TFEU](#) provides a legal basis for establishing minimum rules for the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension. Organised crime is one of these areas. There is however some ambiguity in the formulation of this provision, as organised crime has been listed alongside specific forms of crime (e.g. trafficking in human beings), often committed by organised criminal groups.

These minimum rules may be established by directives of the Parliament and the Council, adopted through the ordinary legislative procedure. Article 83(1) could thus serve as legal basis for a directive defining organised crime offences and related sanctions and replacing the 2008 FD.

[Article 83\(2\) TFEU](#) provides another possibility for approximation of criminal laws when it is deemed necessary for the effective implementation of a Union policy in an area which has been subject to harmonisation measures.

The Lisbon Treaty also allows the establishment of minimum rules with respect to criminal procedure ([Article 82\(2\) TFEU](#)), which has led to the adoption of directives in areas previously regulated by framework decisions (e.g. the 2012 [Directive](#) on the victims of crime). It is debatable to

what extent this provision could be used to legislate in the area of [witness protection](#), closely linked to organised crime. However, the Commission has repeatedly [stated](#) that it has no intention to make such proposals. Witness protection is among measures to be assessed in the course of a study on effectiveness of EU- and national-level tools to fight organised crime, [carried out](#) under the [ISEC Programme](#).

Articles 83(1) and 82(2) TFEU also served as legal base for the Commission's [proposal](#) on the freezing and confiscation of proceeds of crime in the EU [[2012/0036\(COD\)](#)].

The EU policy cycle for organised and serious international crime

The 2010 EU [Internal Security Strategy](#) (ISS) identified the most serious threats faced by European societies, to which no single MS can respond on its own. Serious and organised crime are among those threats and disrupting criminal networks is one of the five objectives defined by the Strategy. The Commission has translated these objectives into three [concrete actions](#):

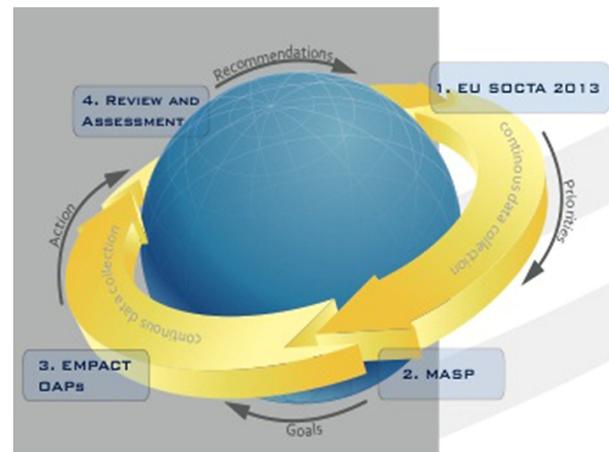
- Identifying & dismantling such networks,
- Protecting the economy against criminal infiltration, and
- Confiscating criminal assets.

In 2010 a decision was made by the [Council](#) to establish a multi-annual policy cycle for the application of the ISS, and start by applying it to organised and serious international crime.

The cycle consists of four steps (see figure 1):

1. Definition of priorities by the Council on the basis of recommendations made in the EU Serious and Organised Crime Threat Assessment (SOCTA), drafted by Europol every four years.
2. Definition of strategic goals in a Multi-Annual Strategic Plan (MASP).
3. Implementation and monitoring of annual Operational Action Plans (OAPs), aligned with the MASP.
4. Evaluation, serving as an input for the following policy cycle.

Figure 1: The EU policy cycle for organised and serious international crime



Source: [Europol](#), 2012.

The ISS has enhanced the role of Europol as its threat assessments have become central for policy making. The first full four-year policy cycle started in March 2013, following the publication of the first [SOCTA report](#).

The European Parliament's position

The Parliament has actively taken part in shaping the EU anti-organised crime framework, critically assessing the existing instruments and recommending possible ways forward.

Consulted by the Council, it adopted in 2005 a [resolution](#) on the proposal for a framework decision on organised crime. The EP sought, among other things, to give some precision to the FD's definitions, however the Council did not follow this up. It also advocated the strengthening of Europol and providing for harsher penalties for members of mafia-type organisations.

In 2007 it adopted a [recommendation](#) to the Council on developing a strategic concept on tackling organised crime (drafted, like the 2005 resolution, by Bill Newton Dunn (ALDE, UK)). The EP called for "real autonomy" of Europol and Eurojust (though under Parliamentary control), which should be granted "full powers of initiative".

In a comprehensive 2011 [resolution](#) on organised crime in the EU, the EP focused, among other things, on improving the EU

legislative framework and structures tackling organised crime. The EP asked the Commission to submit by the end of 2013 a proposal for a directive that would remedy the deficiencies of the 2008 FD in terms of defining organised crime, taking into account its new forms. Such a proposal has yet to appear.

Moreover, the Parliament called on MS to make full use of Eurojust in cases involving cross-border crime. It also invited the Commission to assess the added value of the [European Public Prosecutor's Office](#), considering the possibility of extending its remit to include combating serious cross-border organised crime and corruption (as provided for in [Article 86\(4\)](#) TFEU).

Furthermore, the Parliament announced its intention to set up a special committee to investigate the extent of cross-border organised crime in the EU, its social and economic impact, as well as identifying legislative measures to address this issue. The [Special Committee on Organised Crime, Corruption and Money Laundering](#) (CRIM) was set up in March 2012. The vote on the final report (rapporteur Salvatore Iacolino (EPP, Italy)) is scheduled for 17 September

2013 during the last meeting of the Committee before the end of its extended term of office.

Main references

[The EU role in fighting transnational organised crime](#) / A Scherrer, A Mégie and V Mitsilegas, Policy Department C, European Parliament, 2009.

[The Council Framework Decision on the fight against organised crime: What can be done to strengthen EU legislation in the field](#) / V Mitsilegas, Policy Department C, European Parliament, 2011.

[Organised crime legislation in the European Union](#) / F Calderoni, 2010.

Disclaimer and Copyright

This briefing is a summary of published information and does not necessarily represent the views of the author or the European Parliament. The document is exclusively addressed to the Members and staff of the European Parliament for their parliamentary work. Links to information sources within this document may be inaccessible from locations outside the European Parliament network. © European Union, 2013. All rights reserved.



<http://www.library.ep.ec>

<http://libraryeuroparl.wordpress.com>

Endnotes

- ¹ See the Library Briefing on "Organised crime in the European Union".
- ² [The EU role in fighting transnational organised crime](#) / A Scherrer, A Mégie and V Mitsilegas, Policy Department C, European Parliament, 2009, pp 6, 10 and 31. See also [Developing an EU Internal Security Strategy, Fighting Terrorism and Organised Crime](#) / A Scherrer, J Jeandesboz and E-P Guittet, Policy Department C, European Parliament, 2011, p. 19. The EU approach has also been criticised for its excessive focus on law enforcement to the detriment of crime prevention (which involves addressing the social and economic roots of crime) – see *ibid.* p 20.
- ³ [A definition that does not work: The impact of the EU Framework Decision on the fight against organized crime](#) / F Calderoni, *Common Market Law Review* 4/2012, pp 1378–1379.
- ⁴ e.g. the 1997 [Action Plan to combat organized crime](#) and the "[Millenium Strategy](#)", 2000.
- ⁵ F Calderoni, *op. cit.* p. 1375.
- ⁶ [The Council Framework Decision on the fight against organised crime: What can be done to strengthen EU legislation in the field](#) / V Mitsilegas, Policy Department C, European Parliament, 2011, pp 14–16.
- ⁷ For a critical appraisal of Europol's threat assessments see [International Organised Crime in the European Union](#) / J Sheptycki, H Ben Jaffel and D Bigo, Policy Department C, European Parliament, 2011, pp 20–22 and A Scherrer, J Jeandesboz and E-P Guittet, *op. cit.* pp 21–22.
- ⁸ V Mitsilegas, *op. cit.* p. 20; [The end of organised crime in the European Union](#) / N Dorn, *Crime Law Soc Change* (2009) 51, pp 283–295.
- ⁹ A Scherrer, J Jeandesboz and E-P Guittet, *op. cit.* pp 46–51; A Scherrer, A Mégie and V Mitsilegas, *op. cit.* pp 26–29. See also [Europol: Linking law enforcement across Europe](#) / Library Briefing, 2011.