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DRAFT REPORT

on organised crime in the European Union
(2010/2309(INI))

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on organised crime in the European Union (2010/2309(INI))

The European Parliament,

- having regard to Article 3 of the Treaty on European Union, Article 67, Chapter 4 (Articles 82-86) and Chapter 5 (Articles 87-89) of the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union,
- having regard to the Stockholm Programme on freedom, security and justice¹, the Commission communication 'Delivering an area of freedom, security and justice for Europe's citizens – Action Plan Implementing the Stockholm Programme' (COM(2010)0171) and the Commission communication 'The EU internal security strategy in action: five steps towards a more secure Europe' (COM(2010)0673),
- having regard to the conclusions of the JHA Council of 8 and 9 November 2010 on the establishment and implementation of an EU policy cycle to combat international serious and organised crime,
- having regard to Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime²,
- having regard to the UN Convention against Transnational Organised Crime, adopted by the General Assembly on 15 November 2000 (resolution 55/25), and its Protocols, in particular the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition,
- having regard to the European Parliament study entitled 'The EU role in fighting transnational organised crime'³,
- having regard to the OCTA reports (European Organised Crime Threat Assessment) drawn up each year by Europol⁴,
- having regard to Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime⁵,
- having regard to Eurojust's annual activity reports (2002-2010)⁶,

¹ OJ C 115, 11.5.2010, p. 1.

² OJ L 300, 11.11.2008, p. 42.

³ PE 410.678.

⁴ <http://www.europol.europa.eu/index.asp?page=publications&language=>

⁵ OJ L 138, 4.6.2009, p. 14.

⁶ http://www.eurojust.europa.eu/press_annual.htm

- having regard to Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network¹,
- having regard to the Communication from the Commission to the Council and the European Parliament on the role of Eurojust and the European Judicial Network in the fight against organised crime and terrorism in the European Union (COM(2007)0644),
- having regard to Council Decision 2009/371/JHA establishing the European Police Office (Europol)²,
- having regard to Council Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters³,
- having regard to the Conventions of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union⁴ and of 18 December 1997 concerning the Convention on mutual assistance and cooperation between customs administrations (Naples II)⁵,
- having regard to Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States and subsequent amending acts⁶,
- having regard to the Commission communications pursuant to Article 34 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (COM(2005)0063 and COM(2006)0008);
- having regard to the report on the implementation of the European arrest warrant published by the Commission on 11 July 2007 and the information note from the General Secretariat of the Council concerning the 'Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant - Year 2007'⁷,
- having regard to the European Parliament recommendation to the Council on the evaluation of the European arrest warrant (2005/2175(INI))⁸,
- having regard to the Council Framework Decision of 13 June 2002 on joint investigation teams⁹, and the report from the Commission on national measures taken to comply with the Council Framework Decision of 13 June 2002 on Joint Investigation Teams (COM(2004)0858),
- having regard to the 2009 European Parliament study entitled 'Implementation of the

¹ OJ C 348, 24.12.2008, p. 130.

² OJ L 121, 15.05.09, p. 37.

³ OJ L 350, 30.12.08, p. 60.

⁴ OJ L 197, 12.07.2000.

⁵ OJ L 24, 23.01.1998.

⁶ OJ L 190, 18.07.2002, p. 1.

⁷ 10330/08

⁸ OJ C 291E, 30.10.2006, pag. 244

⁹ OJ L 162, 20.06.2002

European Arrest Warrant and joint investigation teams at EU and national level¹,

- having regard to Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing²;
- having regard to Regulation (EC) No 1889/2005 on controls of cash entering or leaving the Community³;
- having regard to Regulation (EC) No 1781/2006 on information on the payer accompanying transfers of funds⁴,
- having regard to Council Framework Decision 2003/568/JHA on combating corruption in the private sector⁵ and the report from the Commission to the Council based on Article 9 of Framework Decision 2003/568/JHA (COM(2007)0328),
- having regard to the UN Convention against Corruption (known as the 'Merida Convention');
- having regard to the Council of Europe's Criminal Law and Civil Law Conventions on Corruption; having regard to the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions,
- having regard to the study by the Center for the Study of Democracy ordered by the Commission, entitled 'Examining the Links between Organized Crime and Corruption' (2010),
- having regard to Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law⁶,
- having regard to Rule 48 of its Rules of Procedure,
- having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Women's Rights and Gender Equality (A7-0000/2011),

Introduction

1. Welcomes the measures to curb organised crime proposed in the Stockholm Programme, in the relevant action plan and in the internal security strategy;
2. Is convinced that organised crime is one of the key threats to the internal security of the EU; considers that it should be treated separately from terrorism and calls for a specific,

¹ PE 410.671.

² OJ L 309, 25.11.05, p. 15.

³ OJ L 309, 25.11.2005, p. 9.

⁴ OJ L 345, 8.12.2006, p.1.

⁵ OJ L 192, 31.07.2003, p. 54.

⁶ OJ L 328, 06.12.2008, p. 28.

horizontal EU strategy on the issue, including legislative and operational measures, the allocation of funds and a strict implementation timetable;

3. Calls on the Member States to clarify their political will to combat organised crime, first and foremost by strengthening their judicial authorities and police forces based on the best current experience and by assigning adequate human and financial resources for that purpose;
4. Calls for all measures to counter organised crime to respect fundamental rights in full and be proportionate to achieving their objective in a democratic society;
5. Is aware that organised crime cannot proliferate without the aid, the complicity, or even the mere indifference of the political world, and expresses deep concern about the evidently increasing interpenetration of organised crime and politics, involving the creation of a so-called grey area which is seriously jeopardising the credibility and true democratic nature of the institutions; expresses equal concern over the proven ability of organised crime to infiltrate the nerve centres of general government and the economic and financial fabric;

Improving the EU legislative framework

6. Stresses that to counter transnational organised crime requires an effort on the part of the Member States and calls on them to approximate their legislation, especially with reference to the development of common, standard procedures and types of criminal offence, taking as a model the legal systems that are the most highly developed in terms of countering organised crime;
7. Is dissatisfied with the extremely limited impact on the legislative systems of the Member States of Framework Decision 2008/841/JHA on organised crime, which has not made any significant improvement to national laws or to operational cooperation to counter organised crime; stresses, therefore, the need to review and strengthen the legislative framework and calls on the Commission to submit, by the end of 2012, a proposal for a directive which contains a less general definition of organised crime and manages better to identify the key features of the phenomenon; requests that, as regards the offence of membership of a criminal organisation, whilst showing due respect for different legislative systems, the abolition of the current dual approach (which criminalises both membership and conspiracy) be proposed and a range of habitual offences committed by organised crime be identified, which, regardless of the maximum sentence permitted in the Member States, could be deemed to constitute such a criminal offence;
8. Calls on the Commission, the Council and the Member States to focus their dissuasive action on attacking criminal assets, including those that are indirectly linked to criminal organisations and their affiliates, which are often hidden behind a network of front men and supporters;
9. Calls on the Commission to submit, as soon as possible, an organic proposal for a directive on the confiscation of assets and the proceeds of crime, accepting and supporting the urgent need for European legislation on the re-use of crime proceeds for social purposes, so that the capital of criminal organisations or their associates can be re-injected

into legal, clean, transparent and virtuous economic circuits;

10. Stresses the importance of providing appropriate protection for the victims of organised crime, witnesses, informers and their families and calls on the Commission to submit, as soon as possible, a legislative proposal on this issue, the subject of which should be not only victims and their families but also witnesses and informers; calls for all types of victim to be treated equally (in particular the victims of organised crime, of duty and of terrorism) and for the protection of court witnesses to be extended over and beyond the duration of the court proceedings; proposes establishing a European fund for the protection of victims and court witnesses;

Eradicating entrenched Mafia-style organised crime in the EU

11. Calls on the Commission to draw up a proposal for a directive to make the offence of Mafia association a punishable crime in all Member States, in order to be able to punish criminal organisations which profit from their very existence, through their ability to intimidate – even without any specific acts of violence or threats – with the aim of securing the management or control, either directly or indirectly, of businesses, concessions, authorisations, contracts and public services, or of making, for themselves or others, unfair profits or gaining unjust advantages, or of preventing or impeding the free exercise of voting rights or securing votes for themselves or others in elections;
12. Intends to set up, within three months of the adoption of this resolution, a special committee on the dissemination of Mafia-style criminal organisations, both from Italy and elsewhere, which operate across borders; one of its aims will be to investigate the extent of the phenomenon and the negative social and economic impact it has throughout the EU, including the issue of the misappropriation of public funds by Mafia-style criminal organisations and their infiltration into politics and general government; another aim will be to identify a range of legislative measures in order to address this tangible and acknowledged threat to the EU and its citizens; calls, therefore, on the Conference of Presidents to put forward a proposal under Rule 184 of the Rules of Procedure;
13. Calls on the Commission to conduct a study to assess the negative impact of transnational organised crime in the European Union, primarily referring to Mafia-style organised crime and its links with criminal organisations from countries outside Europe;

How to improve the functioning of European structures involved in various ways in fighting organised crime and to strengthen relations with other international institutions

14. Asserts the importance of strengthening Eurojust in order to improve its effectiveness in countering transnational organised crime, with reference to its powers of initiative and to those conferred upon it under Article 85 of the Treaty on the Functioning of the European Union; takes the view that, in parallel, the provisions of the Treaty of Lisbon concerning the evaluation of Eurojust's activities by the European Parliament and the national parliaments should be implemented, and is awaiting the relevant communication from the Commission by the end of 2011 and the legislative proposal by the end of 2012;
15. Reiterates its firm support for the implementation of Article 86 of the Treaty on the Functioning of the European Union concerning the establishment of a European Public

Prosecutor's Office and calls on the Commission to arrange, as soon as possible, an impact assessment on the added value of this institution, considering as being within its scope both the protection of the EU's financial interests and the combating of cross-border organised crime, as provided for under Article 86(4) of the Treaty on the Functioning of the European Union; reiterates its request that the Commission immediately launch debates and consultations with the parties concerned, including civil society, on the establishment of the European Public Prosecutor's Office and make all the necessary arrangements to set up the appropriate institutional infrastructure, giving Eurojust full powers and consolidating, clarifying and simplifying its relations with key players such as the European Judicial Network, OLAF and Europol and with individual national judicial and administrative institutions;

16. Recognises that despite the protocols and bilateral agreements between Europol, Eurojust and OLAF there is still significant room for improvement as far as cooperation between these institutions is concerned; calls, therefore, on Europol, Eurojust and OLAF to make tangible, joint efforts both to assess and constantly update the cooperation agreements and to implement them, notably with reference to exchanges of case summaries, information relating to cases and strategic information and data;

Developing the principle of the mutual recognition of criminal decisions and improving judicial and police cooperation in the EU and with third countries

17. Is aware that in order to overcome practical obstacles to judicial cooperation, considerable attention needs to be paid to informing and raising awareness among the judicial and police authorities and calls on the Member States to consider judicial and police training a political priority; at the same time, calls on the Commission to mobilise the appropriate resources, including financial ones, to support the activity of the Member States;
18. Recognises that judicial cooperation is one of the pillars for combating transnational organised crime and for establishing a common area of security and justice, and calls on the Member States to honour their commitments and immediately to incorporate into their legislation all the judicial cooperation instruments that already exist at EU level, in particular the 2000 Convention on Mutual Assistance in Criminal Matters and the Framework Decision on joint investigation teams;

Other recommendations to counter organised crime

19. Stresses the importance of promoting a culture of legality and increasing awareness and knowledge of the issue among citizens and, in general, public opinion; highlights, in this regard, the fundamental role of a free press that is free from all outside influences and can thus investigate and publicise the links between organised crime and vested interests, first and foremost those of politics; expresses serious concern over all measures taken by Member States which tend to reduce press freedom or subject it to any form of control;
20. Emphasises the vital importance of public sector transparency in the fight against organised crime and calls on the Commission to take action to lay down the necessary rules and ensure that the use of EU funds is fully traceable and monitored both by the competent institutions and the citizens and press; calls for this information to be promptly made available on the internet; calls on the Member States to adopt similar measures to

make all transactions using public funds transparent, with particular reference to local authorities, which are more liable to infiltration by organised crime;

21. Calls for, with all due respect for fundamental rights, stricter sentences for offences relating to organised crime and harsher prison conditions, both to discourage the commission of offences and to prevent prisoners from continuing to lead organisations during their sentences or from helping them to achieve their aims by committing further crimes;

Counter measures relating to specific areas of action of organised crime

22. Is convinced of the intrinsic link between organised crime and corruption and emphatically reiterates the request it expressed when adopting Written Declaration 02/10, both with reference to the creation of a mechanism to assess and monitor the policies of the 27 Member States in combating corruption and with regard to the framing of a comprehensive anti-corruption policy by the EU institutions; stresses the need for a proactive approach to combating corruption and calls on the Commission to place emphasis on measures to counter political corruption, that of the civil service, the courts, the police and customs officers, in addition to private sector corruption; considers it, moreover, a priority to develop effective measures to combat corruption in the neighbourhood policy and in the use of development aid funds;
23. Calls on the Member States immediately to ratify international anti-corruption instruments, in particular the United Nations Convention against Corruption and the Council of Europe's Criminal Law and Civil Law Conventions on Corruption (1999);
24. Undertakes to lay down rules to ensure that those who have been convicted of membership of criminal organisations or who have committed offences relating to such organisations, including aiding and abetting, or of corruption offences, will be unable to stand for election to the European Parliament; calls on European political groups to draw up internal codes of ethics to prevent those who have been convicted, even if not definitively, of such offences from standing for election; calls on the Member States to lay down similar rules for national and local elections and on the national parties to draw up codes of conduct to prevent those who have been convicted, even if not definitively, of the above-mentioned offences from standing for election;
25. Calls on the European institutions to send out a clear message at EU level and to assert their political influence internationally with a view to curbing forms of money laundering through the use of the financial markets, in particular by: drawing up better capital control rules; encouraging a reduction of the pervasiveness of the financial markets (using tools such as the taxation of investment income and the introduction of a tax on international financial transactions); imposing increased transparency on the use of public funds, first and foremost on those to support private sector development, and carrying out a serious and effective offensive against tax havens by imposing country-by-country financial reporting on all multinational economic operators; promoting a multilateral agreement on the exchange of tax-related information whilst revising the definition of 'tax haven' and the list of these secret jurisdictions;
26. Calls on the Commission carefully to monitor the transposition by the Member States of

the EU directive on the protection of the environment through criminal law, to ensure that it is done promptly and effectively; requests that clarification be given by the EU institutions, to avoid problems of interpretation in the courts of the Member States, as to the civil liability of legal persons provided for in Directive 2008/99/EC; calls on the Commission to submit a proposal to extend to the EU Italy's positive experience with the offence of 'organised illegal waste trafficking', as provided for in Article 260 of Legislative Decree 152/06;

27. Instructs its President to forward this resolution to the Council, the Commission and the national parliaments.

EXPLANATORY STATEMENT

It is now acknowledged that organised crime has a substantial social cost in that it misappropriates and dissipates resources (financial, labour resources, etc.), distorts the free common market, pollutes businesses and the legal economy, promotes corruption, contaminates and destroys the environment, infringes human rights and suppresses the rules of democracy. The effects of this phenomenon have a strong impact on the EU's commitments towards its citizens. The institutions must therefore make a concrete political effort to counter organised crime and produce tangible and significant results.

In addition, organised crime, especially Mafia-style crime, is taking advantage of globalisation, the abolition of borders in the EU and the legislative differences among the Member States to make increasingly substantial profits whilst at the same time ensuring they remain unpunished. This has been made possible due to the fact that organised crime has created an approval and support network, involving deep, consolidated infiltrations into the political world, the civil service and the legal economy, as shown by alarming evidence that has emerged from the courts and investigations.

Organised crime now acts on a transnational, cross-border basis and has to be fought by using the same approach. Moreover, as recognised by the Commission, the presence and firm establishment of Italian mafias (*Ndrangheta, Camorra, Cosa Nostra, Sacra Corona Unita*) in nearly all EU countries is, to all intents and purposes, a European problem of concern, as are the networks established between European and non-European criminal organisations such as the Russian, Chinese, Albanian and Nigerian mafias, Turkish and North African criminal organisations and the Colombian and Mexican drug cartels.

The Treaty of Lisbon opens up new opportunities and provides new instruments at EU level, in terms of both judicial and police cooperation and of authorities responsible for countering transnational organised crime (Europol, Eurojust, OLAF, European Public Prosecutor), not to mention the possibilities of establishing common rules to combat such crime more effectively.

This report has the ambitious aim of setting out Parliament's guidelines and proposals to counter organised crime at the EU level. Following a number of general considerations, proposals are made for action to improve the EU legislative framework, including several specific measures to address the internationalisation of Mafia-style criminal organisations. Of vital importance are both the strengthening and improved functioning of European structures that are involved in various ways in fighting organised crime, and relations with other international institutions such as the UNODC and Interpol.

Considerable attention is paid to the issue of full compliance with the principle of the mutual recognition of criminal decisions, with a view to combating organised crime, and to improving judicial cooperation both between Member States and with third countries.

Lastly, the report looks at the policies the EU can frame with regard to organised crime's key areas of action, in particular: trafficking in, and exploitation of, human beings; international drug trafficking; arms trafficking; money laundering and financial crimes; corruption,

interpenetration and coexistence of organised crime, politics and the civil service, and misappropriation of public funds (in particular EU funds) by organised crime; ecomafias and environmental crimes; cyber-crime; counterfeit products and related trafficking, and extortion and usury.