EUROPEAN PARLIAMENT

1999 *2004*

Session document

FINAL
A5-0398/2000

15 December 2000

REPORT

on the report of the Multidisciplinary Group on Organised Crime - Joint Action on mutual evaluations of the application and implementation at national level of international undertakings in the fight against organised crime (10972/2/99 – C5-0039/2000 – 1999/0916(COS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Enrico Ferri

CONTENTS

Page

PROCEDURAL PAGE

By letter of 15 December 1999 the Council forwarded to Parliament its report drawn up pursuant to Article 8(4) of the Joint Action of 5 December 1997, adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime (10972/2/99 – 1999/0916(COS)).

At the sitting of 21 January 2000 the President of Parliament announced that she had referred the report to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0039/2000).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Enrico Ferri rapporteur at its meeting of 24 February 2000.

The committee considered the Council report and the draft report at its meetings of 12 July 2000, 12 October 2000, 7 November 2000, and 5 December 2000.

At the latter meeting it adopted the motion for a resolution by 18 votes to 1, with 3 abstentions.

The following were present for the vote: Graham R. Watson, chairman; Maria Berger (for Ozan Ceyhun), Alima Boumediene-Thiery, Michael Cashman, Charlotte Cederschiöld, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Francesco Fiori (for Marcello Dell'Utri, pursuant to Rule 153(2)), Pernille Frahm, Anna Karamanou, Margot Keßler, Timothy Kirkhope, Ewa Klamt, Baroness Sarah Ludford, Hartmut Nassauer, Elena Ornella Paciotti, Hubert Pirker, Christian von Boetticher, Anna Terrón i Cusí, Maurizio Turco (for Marco Cappato) and Gianni Vattimo.

The report was tabled on 15 December 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution on the report of the Multidisciplinary Group on Organised Crime - Joint Action on mutual evaluations of the application and implementation at national level of international undertakings in the fight against organised crime (10972/2/99 – C5-0039/2000 – 1999/0916(COS))

The European Parliament,

– having regard to the report drawn up pursuant to Article 8(4) of the Joint Action of 5 December 1997[1], adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime and noting that the subjects chosen for the first round of evaluations are the delays in the operation of the system for mutual legal assistance and urgent requests for the seizure of assets (10972/2/99 – C5-0039/2000),

– having regard Articles 29, 31, 32, 35, 36 and 39 of the Treaty on European Union,

– having regard to the joint actions of 29 June 1998 on good practice on mutual legal assistance in criminal matters and on the creation of a European Judicial Network[2],

– having regard to conclusions Nos 30 (first part), 33, 35, 36, 37, 40, 42, 43, 46, 48, 51, 52, 54, 55 and 57 of the Tampere European Council,

– having regard to the European Union strategy for the beginning of the new millennium – the prevention and control of organised crime[3],

– having regard to the Europol report of 1 February 2000 on the EU organised crime situation in 1998 (Doc. 14119/1/99),

– having regard to the Commission communication to the Council and the European Parliament (COM(2000) 495 of 26 July 2000) on mutual recognition of final decisions in criminal matters,

– having regard to the French Presidency's programme of action against crime and judicial cooperation in criminal matters,

– having regard to the conventions and other acts on judicial cooperation and mutual assistance in criminal matters and, in particular, the relevant Council of Europe and European Union instruments,

– having regard to its previous resolutions on judicial cooperation in criminal matters,

– having regard to its legislative resolution of 20 November 1997 on the draft joint action establishing a mechanism for evaluating the application and implementation at national

[1] OJ L 344, 15.12.1997, p. 7.
[2] OJ L 191, 7.7.1998, pp. 1 and 4.
[3] OJ C 124, 03.05.2000, p. 1.

level of international undertakings in the fight against organised crime[4],

– having regard to Rule 47(1) of its Rules of Procedure,

– having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0398/2000),

A. whereas the citizens of the European Union Member States have a right to expect the Union to take effective action against the growing threats posed to their freedom and rights by crime, in particular the most serious offences and organised crime, whether they are committed by indigenous groups or foreign or mixed groups,

B. whereas, in order to tackle these threats, a radically new joint effort is needed aimed at fighting and preventing crime and criminal organisations throughout the territories of the Member States and whereas this effort must include the mobilisation of judicial resources,

C. whereas effective judicial cooperation in criminal matters is likely to help uphold the principle of sovereignty against criminal organisations which are determined to show disregard for government structures, democracy and the rules of the legal economy in Member States,

D. whereas, at present, the loopholes and shortcomings of existing national legal systems and international agreements, as well as the conflicts and differing definitions of jurisdiction arising from the adherence to the principle of sovereignty, can give rise to areas and situations of impunity for those responsible for crimes and the proceeds from criminal activities,

E. noting with concern that certain areas of criminal activity are at present more profitable and entail fewer risks (e.g. high-tech crime or environmental crimes), in many cases concern milder areas of law than others and are given lower priority by national bodies responsible for implementing laws,

F. whereas the European Union's needs with regard to judicial cooperation and criminal matters now go well beyond mere exchanges of information or evidence and transfers of persons,

G. noting with satisfaction the successful launch of the European Judicial Network's activities and its first pilot projects, and encouraging the national contact points and their administrations to become more and more closely involved in the network's activities,

H. whereas the EU Treaty provides for the possibility of establishing a corpus of material criminal law provisions, in particular on organised crime, whose elements (criminal acts and penalties) will be derived from the approximation of rules between the Member States,

I. whereas prime importance is attached in the Treaty to judicial cooperation in criminal matters, which includes cooperation in relation to proceedings and the enforcement of decisions and ensuring compatibility in rules applicable, as a means of achieving the

[4] OJ C 371, 8.12.1997, p. 4.

objective of providing citizens with a high level of safety within an area of freedom, security and justice,

J. noting with deep concern that those in the legal sphere responsible for transfrontier procedures are often required simultaneously to apply a vast number of conventions and laws relating to different geographical areas and laying down different procedures or responses to the problems arising, and that these operators do not have easy access to laws on legal assistance in criminal matters or clear instructions on the law to be applied in dealing with incoming and outgoing requests,

K. noting the lack of uniform interpretation of the various conventions in the Member States both in decisions on the legal assistance to be given and in judicial rulings on the admissibility of requests,

L. noting with concern that the absence of any sanction mechanism against states which fail to fulfil (or do not fulfil within the appointed time-limit) their obligations under an international convention or agreement which they have signed diminishes the system's credibility in the eyes of operators and undoubtedly has an adverse effect on crime prevention policies,

M. whereas the mutual evaluation mechanism established as part of the action plan against organised crime approved in Amsterdam in June 1997 can be considered, *per se*, as a significant step forward, together with the establishment of the European Judicial Network and other initiatives to modernise and increase the effectiveness of systems to prevent and combat organised crime,

N. noting that the Council's report to the European Parliament only covers five European Union Member States, but that other documents relating to other countries have been made available in the meantime,

O. welcoming the decision taken by a number of Member States which have already been the subject of an evaluation to make the most urgent reforms and improvements in respect of their own system in anticipation of the evaluations,

P. whereas, nonetheless, monitoring of compliance by the Member States with their obligations in the fight against organised crime should, in the long run, be the responsibility of the Court of Justice of the European Communities and whereas the introduction of any other monitoring system should be seen as a provisional measure,

Q. whereas the traditional system of judicial cooperation in criminal matters, based on the 'request' principle, is slow, cumbersome and produces rather poor results,

R. sharing the Commission's view that the principle of mutual recognition of decisions in criminal matters, based on the Member States' mutual trust in each other's systems, leads to a proper evaluation of the legitimacy, equivalence, adequacy and validity of provisions and of the application of laws, concepts which are fundamental to the effective operation of judicial cooperation in criminal matters,

S. whereas solutions need to be found as a matter of urgency on the questions

- raised by those active in the legal sphere, who are involved in practical work in the field of judicial cooperation in criminal matters;
- raised by Member States which do not respect their obligations under existing conventions and other agreements;
- linked to the principle of respect for individuals and their fundamental rights and freedoms, in particular persons accused or sentenced and victims, who should under no circumstances be treated better or worse in international cooperation proceedings than in national proceedings,

1. Reiterates that effective judicial cooperation in criminal matters can help uphold the principle of sovereignty against criminal organisations which are determined to show disregard for government structures, democracy and the rules of the legal economy in Member States;

2. Notes with concern that the Council's report to the European Parliament highlights, among the most serious difficulties, the following with reference to certain countries:

   - political control of letters of request or authorising role of the executive authority regarding the action to be taken on requests for legal assistance, to the detriment of the hitherto acknowledged possibility of direct transmission between judicial authorities;
   - possibility of misusing appeals as a delaying tool, duplication of procedures or procedures that are unnecessarily complex for those carrying out investigations;
   - absence of an effective record keeping and control system regarding the number and functioning of assistance procedures (statistics, monitoring of procedures, databanks);
   - inadequate human and financial resources;
   - adverse effect of the application of the dual criminality requirement;
   - lack of comprehensive and clear guidelines from the central authorities for the operation of international legal assistance and need to redefine their role;

   and calls on the Council and the Member States to take all the necessary legislative and budgetary measures to remedy these problems, in keeping with the provisions of the Treaty on European Union and the Tampere conclusions on the area of security and justice;

3. Expects the results of the evaluations in respect of the remaining countries to be forwarded without delay;

4. Calls for Article 35 of the Treaty on European Union to be revised so that, in the long run, the Court of Justice of the European Communities is given the power to decide whether the Member States comply with their obligations under conventions, agreements and European law, including Council of Europe instruments, with regard to judicial cooperation in criminal matters; this should also include the power to issue enforceable decisions and to adopt any other necessary provisions, such as the establishment of time-limits;

5. Calls for the Union in due course to set up, pending the necessary approximation of criminal laws and the relevant penalties, a Public Prosecutor's Office with jurisdiction over the Member States' territory as a whole, assisted by national investigatory authorities for the most serious cases of cross-border crime, and in particular organised crime, trafficking in human beings, exploitation of women and children, terrorism, drug and arms trafficking,

money laundering and fraud affecting the Community budget;

6. Calls on the Council, as a matter of urgency, to establish the list of international legal instruments providing an overall hierarchical framework of obligations currently applying to the individual Member States and to lay down guidelines regarding compliance with deadlines;

7. Calls for the following to be drawn up and made available to judges and public prosecutors, possibly through the European Judicial Network or Eurojust:

   (a) a centralised documentation instrument which may be consulted at all times, containing the relevant legislation on judicial cooperation in criminal matters, and taking account of any protocols, annexes, declarations, reservations and other subsequent restrictions and amendments, as well as details of the channels to be used and standard forms for forwarding requests for legal assistance,

   (b) eventually, a European electronic register of final decisions and orders issued in criminal matters and of procedures currently pending before national authorities to facilitate the implementation of the principle of mutual recognition and improve coordination of criminal prosecution activities, *inter alia* with a view to the execution of cumulative sentences and the bearing of related costs;

8. Calls for determined action to be taken to resolve the problem of linguistic barriers affecting judicial cooperation in criminal matters, for example by selecting arrangements based on a restricted number of working languages, following the example and practice of international organisations such as the UN, the Council of Europe and the European Court of Human Rights;

9. Calls on the Council to consider including, among the 'appropriate measures' to be adopted at the end of each evaluation cycle, indirect sanctions against Member States whose behaviour is deemed not to comply with the principles of loyalty and efficiency in judicial assistance in criminal matters: such sanctions could include, in particular, restrictions on their participation in Community and Union programmes in the field of justice and action to combat crime and provisions to ensure that procedures are brought into line with agreements concluded and the rules on good conduct;

10. Calls for the future Eurojust unit to be open to all the applicant countries and, possibly in due course, to all the Council of Europe member states in order to avoid creating new obstacles to the proper functioning of judicial cooperation;

11. Welcomes some of the points contained in the ‘EU strategy for the beginning of the new millennium – the prevention and control of organised crime’ and, in particular, considers the following to be priority issues:

   (a) improving statistical data (collection, analysis, access to various categories, use and exchange) on transnational crime, partly through mutual evaluation;

(b) review of criminal laws of the Member States, partly through the process of mutual evaluation, and efforts aimed at approximation with regard to the most serious crimes at the sustained rate proposed in the 'strategy' (one offence per presidency);

(c) speeding up and intensifying the process of mutual evaluation on the basis of agreed standards and stable and adequate resources; reaching agreement with the Commission and Parliament on the choice of themes for the evaluation exercises; establishing ongoing evaluation mechanisms making it possible to carry out evaluations on different aspects simultaneously without causing delays of several years in the consideration of individual countries;

(d) approval of the principle of mutual recognition of final rulings, orders and other enforceable decisions of judicial authorities in criminal matters with a view to their execution without delay and by means of procedures that respect individual rights;

(e) provision of adequate resources, in particular for training, new means of investigating organised crime and the tracing of the proceeds of crime,

(f) speeding up exchanges of information and cutting red tape in relation to the tracing, freezing, seizure and confiscation of the proceeds of crime, in particular where the measures are to be taken in a Member State other than the applicant, without prejudice to the objective of achieving mutual recognition;

(g) speedy ratification of the conventions listed in Recommendation 27 of the EU Strategy for the beginning of the new millennium, as well as the new convention of 29 May 2000 on legal assistance in criminal matters,

(h) withdrawal by the European Union Member States of all reservations expressed in international conventions,

(i) consideration of proposals for accelerated extradition and fast track procedures, subject to a mutual evaluation exercise regarding fulfilment by Member States of their obligations;

(j) full involvement of the applicant countries in the strategy to combat organised crime and in action to improve judicial assistance in criminal matters and support for regional cooperation against organised crime;

12. Supports the legislative initiative taken by the Commission and the Member States to specify, modernise and give an adequate legal status to instruments, in particular joint actions, adopted as part of the 1997 action plan against organised crime, on the basis of rational, simple and transparent codification criteria for the benefit of users;

13. Urges the Member States, pending the harmonisation of criminal laws and the achievement of greater compatibility of procedures, to guarantee the greatest possible degree of practical mutual cooperation between judicial authorities;

***

14. Instructs its President to forward this resolution to the Council, the Commission, the parliaments of the applicant countries and the Council of Europe.

.

EXPLANATORY STATEMENT

I Background

In June 1997, the Amsterdam European Council approved an action plan for combating organised crime. The plan contained political guidelines and specific recommendations. Among these, the recommendations designed to improve judicial cooperation in criminal matters were particularly significant.

At the end of the 1990s there were a number of legal instruments for boosting cooperation, both within the European Union framework and, for instance, that of the Council of Europe. Because of this, a problem arose in defining precisely the Member States' obligations, knowing how far the instruments were applicable, which areas remained within national responsibility, and, of course, assessing how far these obligations were being met, in the light of the European Union's political objectives. These needs for factual information and an assessment also stemmed from the observation of the day-to-day difficulties encountered by the authorities responsible for implementing the law.

About six months after the approval of the action plan, on 5 December 1997 the Council adopted the Joint Action establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime[5] (implementing recommendation 15, in Part III of the action plan).

On 20 November 1997 Parliament, having been consulted by the Council, issued an opinion on the draft joint action (report by Leoluca Orlando, A4-0355/97). In the opinion's explanatory statement, the rapporteur stressed that, in a 'normal' Community structure, review of Member States' compliance with their obligations should be carried out by the Court of Justice of the European Communities. Using an alternative review system, such as that provided for in the Joint Action, should only be considered acceptable insofar as it was a transitional arrangement. Moreover, the rapporteur said that the creation of a group of 'assessors' appointed by the Member States was more appropriate to an intergovernmental cooperation system. Parliament's amendments were not, however, incorporated in the draft.

The Joint Action entered into force on 15 December 1997, the day of its publication in the Official Journal.

In its preamble, the Joint Action refers to the experience acquired within the International Financial Action Task Force on Money Laundering, draws support from the experience of national experts on detachment to the General Secretariat of the Council, and points out that the implementation of the instruments for combating organised crime is primarily the responsibility of each Member State; potential mutual encouragement, equality and mutual confidence therefore prompted the establishment of a specific mechanism:

- peer evaluation of the application and implementation by the Member States of international cooperational instruments (applicable, that is, both within the EU framework

[5] OJ L 344, 15.12.1997, p. 7.

and other institutional frameworks, such as the Council of Europe or Schengen) in criminal matters, by means of 'evaluation teams';

- at least five countries to be assessed each year, on a specific subject, with the Member States to be evaluated in a predefined order: evaluation first by written questionnaire and then by an on-the-spot visit to meet the authorities; the above to be carried out in compliance with the obligation of confidentiality and with the appropriate security arrangements;
- the evaluation teams are made up so that they are as balanced as possible in terms of expertise, as emphasised by the Presidency, and contain experts appointed by the Member States (persons with substantial experience of combating organised crime, chosen from among the police, customs, judicial authorities or other authorities, etc.), with three experts nominated by each Member State, observing the principle by which the group evaluating a country may not contain members who are nationals of that country;[6]
- each evaluation team draws up a report which is sent to the Member State evaluated for its opinion; the Member State may request that its comments be included or amendments made; the draft report may or may not subsequently be amended; it is then forwarded by the Presidency of the Council to the Multidisciplinary Group on Organised Crime, which discusses it, with an opportunity for the Member State concerned to make comments, and adopts its conclusions;
- the Presidency of the European Union informs the Council once a year of the results of the evaluation exercises, and informs Parliament of the implementation of the evaluation mechanism;
- at the end of one complete round of evaluations (which would normally be every three years), the Council is to adopt any necessary adjustments.

* * *

It might be helpful at this point to note two other joint actions:

(a) Joint Action of 29 June 1998[7] adopted by the Council on **good practice in mutual legal assistance in criminal matters** was designed to bring about practical improvements, with a particular view to combating the most serious crimes, and stipulated that each Member State should deposit with the General Secretariat of the Council a statement of good practice with regard to executing requests, including transmission of results, from other Member States and sending requests to other Member States for legal assistance;

- the statements are to include procedural undertakings (acknowledging receipt of requests, providing the requesting authority with all the relevant details of the person responsible for executing the request, giving priority to urgent requests, not marking minor requests as 'urgent', treating external requests in the same way as requests from the Member State's own national authorities, and providing an indication of any difficulties that might prevent the giving of assistance or the meeting of deadlines);

[6] With regard to the method, although the definitive text of the Joint Action did not include Parliament's amendments on the central role to be given to the Commission, it should be noted that in paragraph 3.2 reference is made to the special assistance given to the evaluation teams by the national experts seconded to the General Secretariat of the Council.

[7] OJ L 191, 7.7.1998, p.1.

(b) Joint Action of 29 June 1998[8] adopted by the Council on the creation of a **European Judicial Network,** based on the realisation that the European Union needed structural measures to enable the appropriate direct contacts to be set up between judicial authorities and other authorities responsible for judicial cooperation in the fight against forms of serious crime:

- this is a network of judicial contact points (central authorities with general or specific responsibilities within international cooperation, who may be responsible for certain forms of serious crime, such as organised crime, corruption, drug-trafficking or terrorism) which must cover the entire territory of the Member States;

- the contact points are active intermediaries with the task of facilitating judicial cooperation between the Member States (enabling the establishment of the most appropriate direct contacts between local judicial authorities and other competent authorities in their own country and those of other Member States);

- the contact points provide the legal and practical information necessary to enable effective requests for judicial cooperation to be prepared;

- they facilitate, where necessary, coordinated cooperation, in one Member State, in connection with a series of requests from another Member State;

- the contact points must have permanent access, through the Secretariat General of the Council, to information (which must without fail be constantly updated) on their counterparts in the other Member States, on the judicial authorities, including a directory of the local authorities in each Member States, **on the judicial and procedural systems in the Member States and on the relevant legal instruments, including the texts of declarations and reservations**;

- the European Judicial Network may be linked up by a telecommunications system.

* * *

II Scope of the Council's report to Parliament (25 October 1999)

Article 2(3) stipulates that the first round of evaluations shall begin no later than three months after the entry into force of the Joint Action, and it should therefore have begun on 15 March 1998 (and should end on 15 March 2001).

The report submitted to Parliament by the Council, however, clearly states that the operation began slightly late, in June 1998, and that the assessment of the first five countries evaluated was completed between spring and the end of summer 1999, so that a total delay of about six months had built up.

It is clear from my contacts with the Secretariat General of the Council that, meanwhile, the teams of experts continued the evaluation work and that reports on other countries – in

[8] OJ L 191, 7.7.1998.

addition to the first five – had become available. Parliament successfully asked for the entire text of all the reports already available to be forwarded via official channels[9], insofar as the Member States involved had decided to make them public (choice provided for in Article 9(2) of the Joint Action), since the document forwarded to Parliament which this report deals with is only a summary.

(a) choice of subject for the first exercise

The subject is divided into two parts: delays in the operation of the system for legal assistance and the treatment of urgent requests for the seizure of assets, having particular regard to procedures used in cases of organised crime. It goes without saying that the evaluation refers primarily to legal assistance in criminal matters.

It may be helpful to point out that the report does not contain a list of the international legal instruments from which the Member States' obligations derive.

The report by the Multidisciplinary Group on Organised Crime first of all makes general comments and comments on the method used:

- the breadth of the subject chosen;
- the fact that there were both positive aspects, which should on occasion be held up as examples for other Member States, and aspects where improvements need to be made;
- the overall validity of certain recommendations, which are not just applicable to the evaluation of an individual country;
- the prompt action by the Member States evaluated with regard to the reforms and improvements to be introduced;
- the effect of the evaluation exercise itself in triggering improvements to the system of mutual legal assistance;
- a wish that the reports might be made available to the European Judicial Network, as a source of recent data.

(b) choice of countries:

Luxembourg, the Netherlands, Ireland, Greece and Denmark were the first five countries considered in the overall report sent to Parliament. As mentioned above, the Secretariat of the Council subsequently provided to the rapporteur, via unofficial channels, the reports on Belgium, Finland, Italy and Spain.

However, no explanation of any kind is given of the choice of the first countries, or of the order in which the assessment was carried out.

[9] Denmark, Spain, Luxembourg, Italy, Ireland, the Netherlands, Greece, Belgium and Finland.

(c) Main concerns expressed in the reports

Luxembourg (large number of requests received):

- role of the executive: action to be taken on any incoming or outgoing request for legal assistance concerning the banking sector requires the personal authorisation of the Minister of Justice;
- possibility of misuse of the suspensory effect of appeals as a delaying tactic;
- absence of an effective record-keeping and control system for the operation of assistance procedures;
- no central system for the identification of bank records;
- inadequacy of resources to deal with the volume of requests for assistance;
- assistance refused in respect of an offence prescribed under Luxembourg law.

The Netherlands (key position in the international fight against organised crime):

- role of public prosecutors and investigating judges: requirement for judicial authorisation by an authority other than the investigating judge for search warrants; requirements for the investigating judge to be himself present at the beginning and end of all searches;
- lack of resources – both human and financial – albeit less serious than in Luxembourg;
- lack of consistency in the treatment of 'urgent' requests: the Netherlands applies its own internal criteria instead of accepting the classification of importance, priority or urgency determined by the state requesting assistance;
- legal loophole concerning the person responsible both for money laundering and the predicate offence;
- incompleteness of the computerised record-keeping system (in particular, with regard to outgoing request for assistance from the Netherlands);
- internal procedures liable to produce delays.

Particularly impressed with the criminal legal assistance know-how computer programme (KRIS).

Ireland (relatively inexperienced in this area; relatively small number of cases):

- various cases of duplication of procedures;
- cumbersome procedures (e.g. having to resort to an independent lawyer in procedures for obtaining evidence from witnesses before an Irish court);
- the Director of Public Prosecutions did not have authority to issue letters of request but had to apply to a court;
- lack of clarity in the procedures to be used when search and seizure was requested by a foreign authority;
- no comprehensive record-keeping system and inconsistency of the figures given;
- impossible to provide legal assistance in the specific case of interception of communications.

Particularly impressed with the Criminal Assets Bureau (the summary of the report does not describe the duties of this department but explains, in paragraph 4.6, that it has the authority

to order the confiscation of property under civil law proceedings).

Greece (relatively small number of requests for assistance):

- confusion and conflicting answers regarding the circumstances in which dual criminality would be required for the execution of a request for assistance;
- internal procedures were unnecessarily complex and likely to cause delays; some confusion regarding the roles of the officials concerned; unnecessary duplication;
- uncertainty as to the suspensory effect of an appeal on the execution of the sentence;
- uncertainty about the right of access to letters of request for the person concerned;
- absence of comprehensive and clear guidance by the Ministry of Justice or, where appropriate, the Arios Pagos;
- concern that the current staffing might be inadequate were the number of requests for assistance to increase; lack of technical support (computers) and financial resources;
- absence of a meaningful record-keeping system and inconsistency of data.

Impressed with the commitment and enthusiasm of the personnel and the willingness to give priority to the execution of all foreign requests for assistance.

Denmark:

- absence of meaningful record-keeping system and specific figures;
- the role of the Ministry of Justice was not sufficiently clear and centralised guidance was not available (serious shortcomings were noted, particularly in view of the fact that the Council is due to take a decision within the next few months on Denmark's full cooperation under the Schengen arrangements);
- because there is no specific legislation on legal assistance, domestic law was applied by analogy: complex results (cumbersome procedures in certain cases, inconsistencies, etc.).

Impressed with the pragmatic, informal and flexible attitude of the Danish authorities, benefiting from the positive experience of cooperation between the Nordic countries (efficiency, lack of linguistic barriers, mutual trust).

Provisional conclusions of the multidisciplinary group:

- regarding the central point set up in most Member States to distribute and execute letters of request: in view of the general trend towards direct transmission of letters of request between the judicial authorities concerned, should the role of the central point not be clarified? Among possible new tasks to be allocated, the following are mentioned: checking fulfilment of obligations? ensuring consistency of procedures? checking effectiveness of the assistance to third countries which have not adhered to European instruments? providing advice to applicant countries and third countries? keeping a check on the number of requests and adequacy of resources?

- record keeping is a question of method, providing an overview of the system: number of incoming and outgoing requests for assistance; operating methods and length of procedures; adequacy of resources. The group would be in favour of drawing up a

model based on the experiences of all the Member States;

- work should begin on establishing common criteria for the application of the term 'urgent' and the interpretation of this term;

- the KRIS computer system used in the Netherlands could be used as a basis for the computerised processing of requests for assistance and the possibility of obtaining Community funding could be explored;

- it is essential that efficient and swift methods be used to respond to urgent requests for the tracing and freezing of property (or bank accounts); the report quotes the example of the Criminal Assets Bureau in Ireland;

- maximum advantage should be taken of the European Judicial Network (to become better acquainted with judicial systems in the various Member States and allow informal exchanges), possibly through Community funding;

- dual criminality: in practise the dual criminality requirement has not proved to be an obstacle to search and seizure measures; further consideration should therefore be given to whether there is a real need for such a requirement in cases of serious crime;

- in favour of a more informal approach, while ensuring that human rights are respected (in particular, right to fair trial, defence, etc.).

III. Points to consider for the future

(a) Continuation of the evaluation exercise

The rapporteur suggests considering whether permanent control mechanisms should be set up for the operation of criminal legal assistance. This task could possibly be allocated to the Commission. There is a risk that Member States may show less concern once the 'test' is over. Furthermore, the time that lapses between beginning of the evaluation exercise and the moment when the Council takes 'the appropriate measures' (Article 8(5) of the Joint Action) may be excessively long (three years). It could, instead, forward recommendations to the Member State concerned once a year, setting a deadline for that country to report back on the progress it has made (Article 8(3)).

(b) List of obligations

As mentioned earlier, the report does not contain the list of Member States' obligations: this is true of the whole field of criminal, judicial and police cooperation, especially now that the institutional framework has become more complex: Title VI of the TEU, Schengen closer cooperation, other international frameworks and, in particular, the Council of Europe, instruments of European political cooperation (1980s) and instruments adopted under the Maastricht Treaty.

The rapporteur therefore recommends that the Council publish the list, backed up by details of the main relevant provisions and an indication of the hierarchy of sources and the specific obligations linked to legal cooperation in criminal matters.

Given the coexistence of different institutional and legal set-ups, the list should probably be drawn up on a country-by-country basis. It should be consistent with the *acquis* on which negotiations with the applicant countries are based.

(c) Convention on legal assistance in criminal matters

On 29 May 2000, after more than four years' work, the JHA Council adopted the Convention on mutual legal assistance in criminal matters.

It is now important that the Member States duly ratify the convention as speedily as possible. Under the terms of Article 34(2)(d) of the TEU, this Convention could, once ratified by at least half of the Member States, enter into force for those Member States. The Treaty stipulates that measures implementing conventions must be adopted within the Council by a majority of two thirds of the Member States. One of the most important of these measures will be the establishment of mixed teams (made up of representatives of the judicial authority, the police, etc.) in accordance with one of the articles of the Convention itself.

* * *

The French Presidency recently presented a draft convention on improving legal assistance in criminal matters, especially with regard to the fight against organised crime, money laundering and financial crime. This initiative concerns the removal of a number of legal obstacles (reservations, opposability of banking secrecy, tax offences) and the introduction of practical measures to improve assistance (e.g. for investigations into banking transactions).

(d) Eurojust and European judicial network

The proposals to create a provisional judicial cooperation unit and to set up Eurojust (two proposals from the four Portuguese, French, Swedish and Belgian presidencies and a draft decision submitted by Germany) are currently before the European Parliament.

Eurojust, in particular, should represent the institutionalisation of judicial cooperation against organised crime, meet the need to coordinate and support criminal actions and investigations, give thought to a policy on fighting crime at European level and, above all, link up the police (Europol) and administrative (OLAF) action against crime with the corresponding judicial measures.

Many questions remain unanswered regarding jurisdiction in this area and the powers of Eurojust. However, the necessary legal instrument should be adopted by the end of 2001, pursuant to point 46 of the Tampere conclusions. It is therefore of the utmost importance that the Member States, taking advantage of the provisional unit which will begin to operate on 1 January 2001 and whose experiences will be taken into consideration when setting up Eurojust, immediately take the necessary steps to remedy shortcomings, increase effectiveness and allocate sufficient resources to their legal assistance systems to ensure that

the new structure is introduced in the best possible conditions.

Regarding the **European Judicial Network**, the rapporteur has had access to certain notes[10] which can help to make an initial assessment:

- in the first 16 months since the joint actions entered into force, the contact points have met three times;
- practical tools, such as the CD-ROM containing the list of contact points, the list of investigations, known as 'fiches belges' and the European Judicial Network's web site set up within the Council web site have been produced;
- certain Member States have a large number of contact points while others have only a few (owing to constitutional rules, legal traditions and internal structure). It has been noted, in this context, that a large proportion of the contact points did not take part in the network's meetings and were not involved in the network's activities; it has also been noted that the fewer contact points there were in a state, the more these were active in the network;
- the majority of contact points recognise the need for a telecommunications system to assist the members of the network;
- the transmission of information to all the contact points, with regular updating, and the support of a stronger secretariat are essential.

* * *

Other practical suggestions have emerged from the reports on other countries which have been evaluated, such as:

- the usefulness of establishing Internet sites on the functioning of the various national judicial systems;
- the possibility of making use of video conferences for the benefit of international judicial assistance.

As discussions within the European Parliament in recent years have shown, it is important that the various synergies be fully exploited with a view to improving judicial cooperation in criminal matters, which is one of the principal means of fighting organised crime.

[10] Note 12393/2/1999-REV2-LIMITE-EJN 17 CRIMORG 155-COPEN 15 of 11 November 1999.