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 - Seminar held in The Hague on 5 and 6 July 2004

Delegations will find enclosed the findings and recommendations of a seminar held in The Hague on 5 and 6 July 2004 on an alternative approach to combat organised crime.

CONTENTS

1. Introduction
2. Findings and recommendations
3. Extensive summary of the seminar

Modern organised crime has rooted itself deeply in social and economic life. In the economic domain, criminal organisations disrupt (local) legal markets by ousting bona fide businesses from the market through unfair competition (for instance by using illegal profits for legal economic activities), whereas in the social domain they disrupt local society and the rule of law by implicating socially marginalised groups into criminal activities or human trafficking, by violating planning and environmental regulations and thus potentially harming public health and safety, by corrupting civil servants etc.

The fight against organised crime has traditionally focused on the penal approach. It may be wondered, however, to what extent a purely penal approach is adequate and what added value alternative approaches can give. In practice, many criminal organisations aim at the illegal control over *legal markets*: in other words, they use society's *legal infrastructure*. The laundering of criminal profits through legal economic activities, the creation of legal covers such as catering businesses, arcades and phone houses, the acquisition of premises (for instance for establishing illegal casinos or as home base for human trafficking), corruption in obtaining procurement contracts, the transportation of illegal goods covered by official transport licences... these are but a few examples of criminal organisations deliberately using the legal infrastructure in order to develop and continue their activities. As a matter of fact, many criminal organisations *need* the legal infrastructure for their shady activities to be successful. This means that if the underworld is to penetrate legal markets, it often has to do so 'via' the (local) public administration, for example through licences or subsidies. This very aspect makes criminal organisations vulnerable to an administrative approach to organised crime, and it offers public administrations instruments to combat this type of crime. This also implies that an exclusively penal approach will generally prove inadequate, since it basically focuses on individual criminals and criminal organisations, not on the underlying infrastructure. The problem is that criminal organisations and individual criminals appear to be very easy to replace. A purely repressive approach through penal instruments therefore often amounts to a waste of time and energy. Indeed, criminals may come and go but the infrastructure remains intact. By attacking the underlying structures of organised crime, the administrative approach can therefore also play a *complementary role*, curtailing the development of criminal activities.

The fact that organised crime often needs the public administration (the legal infrastructure) for its activities implies that the latter will need to be involved in the approach to crime. However,

worldwide experience with organised crime shows that it is quite often deeply rooted in local and national cultural society: it often uses the same social and cultural values as law-abiding citizens in order to justify its criminal activities, and it is deeply embedded in *civil society*. The traditional Sicilian mafia, the Russian mafia, ETA terrorists are only a few examples. The interaction between organised crime and the local and national cultural environment implies that the fight against organised crime should be buttressed by a social-cultural approach. Activities aimed at combating organised crime should therefore take place inside society, not outside, and the local community (schools, the business community, religious institutions, NGOs and the like) should be actively involved in the fight against crime and in the promotion of a *culture of lawfulness*. Public administrations have a natural role to play in this approach and may explore various avenues for organising the administrative fight against organised crime: they need not confine themselves to for instance the screening of applicants for licences and they are ideally placed to play an active part in promoting a *culture of lawfulness*, for example by disseminating information, offering alternatives to socially marginalised groups and individuals, activating the local community and last but not least, serving as a role model (“internal probity”).

On 5 and 6 July 2004, the Dutch Ministry of the Interior and Kingdom Relations organised a seminar entitled ‘An alternative approach to combat organised crime’. The aim of the seminar was to put the administrative approach to the fight against organised crime on the European agenda. It also sought to raise the participants’ awareness of the importance and the possibilities of an administrative approach. The seminar was attended by representatives of various member states, (international) experts and European Union representatives.

One of the main objectives of the seminar was to exchange information on the possible options for an administrative approach: what concrete action can administrative bodies take in the fight against organised crime? Experience shows that various avenues are already open: an administrative approach to crime can combine different administrative instruments and types of activities. Local and national authorities and other relevant administrative bodies can for instance *prevent* people from engaging in criminal activities, through training or by combating social marginalisation. They can also *prevent* illegal activities by using administrative instruments for reducing the possible scope of crime, e.g. through mandatory registration, urban renewal, the strategic acquisition of property, zoning plans, integral enforcement plans. Finally, they can *react* to illegal activities of organised crime, for instance by imposing administrative sanctions, revoking licences and subsidies, and they can *prevent* organised crime from taking part in legal activities, for instance by screening applications for licences and subsidies or by excluding criminals from public procurement. The Dutch “Public Administration Probity in Decision-Making Act” (BIBOB) is an example of a

concrete administrative instrument. This new act enables national, regional and local administrative bodies to refuse applications for licences and subsidies if it is suspected that they will be used for punishable offences. To make this possible, a national office has been set up that can carry out probity investigations by examining a large number of closed sources (police files, tax files etc.) and open sources. Other successful cases reviewed during the seminar are the information activities at schools in Palermo, the acquisition of premises used for criminal activities in Amsterdam, the drawing up of blacklists and administrative cooperation schemes with regard to building projects in Munich etc. European case studies also show that administrative approaches are feasible and that best practices already exist in and are encouraged by the EU. In short, the public administration can weapon itself in various ways against organised crime.

However, practice shows that members states are insufficiently aware of the fact that they already have several administrative instruments at their disposal. An administrative approach is possible, desirable as well as feasible, but many hurdles will need to be cleared before such an approach can be implemented Europe-wide, at both the national (within the member states) and the European level. Many practical and legal implementation problems persist when it comes to the concrete application of administrative instruments. Current bottlenecks are the absence of national legislation relating to the exchange of information between the judiciary, the police and the public administration, and the absence of a framework for the exchange of information among member states. Support from the member states for European-level information exchange is a precondition for a successful European administrative approach. More in general, the poor harmonisation of the legislative and regulatory frameworks and of the definitions (for instance with regard to organised crime) at the European level hampers administrative cooperation among member states in the Euregional fight against organised crime. Organised criminals can make good use of this absence of harmonisation for their criminal activities. Finally, there is insufficient awareness of the risks, the nature and the scale of organised crime and of the concrete avenues already open to the public administration for combating it. The seminar and its recommendations and findings aim to raise this awareness.

Awareness, national and European information exchange and cooperation, the exchange of best practices and the harmonisation of relevant regulations are the ingredients of a successful European approach to combat organised crime.

Findings and Recommendations

On the basis of the lectures and the subsequent discussions, the seminar participants formulated a number of core findings supported by the entire meeting.

Findings

1. Public administrations unwittingly facilitate criminal organisations by granting licences and subsidies as well as through public procurement. Organised crime is often dependent on the public administration (legal infrastructure).
2. As a result, an administrative approach to organised crime can complement and reinforce the penal approach.
3. Organised crime is often rooted in culture (“identity-based criminality”). The fight against organised crime therefore requires a cultural approach.
4. An administrative approach presupposes a better definition of the different types of organised crime complementing the penal definition of organised crime.
5. There is no unequivocal and uniform terminology within the EU for referring to the administrative approach to organised crime. The administrative approach is still in its infancy.
6. An administrative approach to organised crime requires a greater awareness of the scale and the nature of the problem.
7. A major component of the administrative approach is to be prevention: preventing people from ending up in organised crime.
8. Member states are encountering various practical and legal problems when implementing an administrative approach (for instance the exchange of information)
9. Preventive exclusion of shady businesses or individuals from public procurement is impeded and in some cases even made impossible by EU directives. This dramatically curtails an effective fight against corruption, fraud or criminal organisations. An effective fight against crime should promote the liberalisation of this important economic sector.
10. It should be investigated whether the national and local organisation of the member states is adequately equipped for an administrative approach.
11. Eventually, national legislation may constitute the basis for European legislation and regulatory measures.
12. A precondition for an effective administrative as well as penal approach is the willingness to exchange information among member states.

13. It should be investigated how the European Union can organise itself in such a way as to make a more effective administrative approach possible.

Recommendations

1. Assess the gravity and the scale of organised crime and the extent to which it has embedded itself in society.
2. Develop a system for international information exchange with regard to public procurement screening.
3. Take stock of different types of administrative approaches to organised crime and make them accessible to all member states via a website, a handbook and the exchange of best practices.
4. Ensure that every member state sets up a (provisional) national point of contact. The national contact persons should meet at least once a year and monitor the implementation of the administrative approach and its results in the member states. In the future, this function could be carried out by existing institutions.
5. Examine whether the legislation of the member states enables the use of penal information for an administrative approach.
6. Examine whether Europol and Eurojust can play a role in the exchange of penal information in the framework of an administrative approach.
7. Develop a model for an administrative approach including, where necessary and possible, the national legislation.
8. Examine the legal impediments in the field of public procurement.

INTRODUCTION

The fight against organised crime has traditionally hinged on the penal approach. At the same time, there are indications that criminal organisations use society's legal infrastructure to develop and continue their shady activities, such as the transportation of illegal goods covered by legal transport licences, the use of subsidies for criminal purposes or the participation in public procurement in order to launder illegal resources. As a result, the underworld and the upper world become entangled, so that the public administration could unwittingly facilitate organised crime.

This calls for an examination of a possible *administrative approach* in complement to the penal approach. To what extent is an administrative approach to crime necessary? What extra value can an administrative approach provide in complement to a penal approach? What are the dilemmas and practical problems involved and what are the possible solutions?

On 5 and 6 July 2004, the Dutch Ministry of the Interior and Kingdom Relations organised a seminar entitled 'An alternative approach to combat organised crime'. The aim of the seminar was to put the administrative approach to the fight against organised crime on the European agenda. In addition, it aimed to increase participants' awareness of the importance and the options of an administrative approach. The seminar was attended by representatives of various member states, (international) experts and European Union representatives.

The present report summarises the main elements put forward during the seminar. The seminar produced several findings and concrete recommendations that will be presented to the relevant European bodies, as well as to the Dutch Prime Minister (as EU President) and to the ministers of Justice and of the Interior and Kingdom Relations.

Opening speech by Mr Donner, Dutch Minister of Justice (summary)

Modern organised crime has embedded itself deeply in our social and economic life. A typical feature of organised crime distinguishing it from other types of crime is that it operates as an industry: criminals and criminal organisations are replaceable. For every criminal caught or for every criminal organisation rounded up, new criminals are ready to take over, and for every criminal activity that is stopped, criminal organisations will develop new activities.

Although both the repression and the prevention of organised crime are high on the EU agenda, not

all instruments in the fight against this type of crime appear to be used as yet. A recent study conducted for the preparation of this seminar¹ shows that policies for preventing the abuse of administrative legislation for criminal purposes and the unintentional facilitation of criminal activities, for instance by means of licences or subsidies, are still in their infancy in most member states.

The Netherlands have abandoned the idea that organised crime should be combated *exclusively* through a penal approach. For some time now, the Netherlands have been investigating alternative approaches, not as a substitute to the penal approach but as a complement. One of the immediate reasons for this approach was a parliamentary inquiry into the gravity and the scale of organised crime in the Netherlands. The results of this study suggested that in various sectors (construction, catering, transport), administrative barriers could and should be erected against the penetration of criminal organisations into the upper world. The BIBOB Act (“Public Administration Probity in Decision-Making Act”) that has been in force in the Netherlands since 2003 is one of the administrative instruments the country now employs to combat organised crime.

An administrative approach such as the BIBOB Act offers an added value in that it attacks the underlying structures of organised crime. This approach has thus become – in complement to the penal approach taken by the police and the judiciary – an essential component of the fight against organised crime in the Netherlands. An effective administrative approach to organised crime should meet four essential conditions. The first is a critical attitude vis-à-vis issues such as licence granting, public procurement and subsidies, as well as the identification of high-risk branches and sectors. But equally important are a coordinated approach with other public partners (national and international) and the integration of administrative activities into systematic (integral) policies.

The added value of an administrative approach to combat organised crime and its implementation.

Lecture by professor Fijnaut, professor of international and comparative law, Tilburg University (NL). Professor Fijnaut’s main areas of interest include organised crime in Europe, international policy and judicial cooperation, and the history of policing activities in the Netherlands. Professor Fijnaut has written a large number of publications on these and related issues, is co-editor of several journals and has been a member of various parliamentary and public commissions on organised crime issues.

¹ *An Alternative Approach – Onderzoek naar de bestuurlijke aanpak van georganiseerde en organisatiecriminaliteit in de Europese lidstaten.* [An Alternative Approach – Study into the administrative approach to organised and organisational crime in the European member states], Berenschot 2004. This study was commissioned by the Dutch Ministry of the Interior.

Although it is difficult to give an unequivocal definition of organised crime, two general types of criminal activities can be distinguished: on the one hand, the production and distribution of (illegal) goods on *illegal markets*, on the other hand the illegal control over *legal markets*. Organised crime is mainly a local problem: women traffickers recruit and employ women locally, drugs are produced and dealt locally. The very fact that criminal practices are local and – more importantly – that they often target *legal markets*, opens avenues to an administrative approach. Indeed, the regulation of (legal) markets, for instance via the granting of licences, is a pre-eminent task for the (local) public administration. If the underworld is to penetrate legal markets, it may have to pass via the public administration. In other words, criminal organisations often need the legal infrastructure for carrying out their shady activities. This use of the legal infrastructure by criminals makes criminal organisations vulnerable and therefore offers ways for tackling this type of crime. The *desirability* of an administrative approach is increased by the limitations of an exclusively penal approach to organised crime. Such an approach basically focuses on individual criminals and criminal organisations. In practice, these individuals and organisations turn out to be relatively easy to replace within the ‘criminal industry’. A purely repressive approach through penal instruments often amounts to a waste of time and energy. Indeed, criminals may come and go but the infrastructure remains intact. That is why the administrative approach can play a *complementary role* by limiting the *scope* for developing criminal activities. The experiences of former mayor Giuliani of New York with the *Cosa Nostra* show that the fight against organised crime benefits from the cooperation between the judiciary, the police as well as the public administration. An important factor in mayor Giuliani’s success in the fight against organised crime is that he complemented and combined his penal experience as public prosecutor with the mayor’s and the city’s administrative powers.

An effective implementation of the administrative approach presupposes both *awareness* and *confidence*: *awareness* among local, national and international authorities of the gravity and the scale of organised crime and the use it makes of the legal infrastructure, and *confidence* that an administrative approach – *complementary to and in combination with the penal approach* – offers a major added value in the fight against organised crime.

The awareness of the organised crime problem, especially with regard to ‘legal’ activities carried out by criminal organisations, is as yet insufficient within the European Union. It is a thorny issue, as also appears from the discussion following the presentation: member states are often unaware of how serious the problem is. Because of the negative connotations of the issue of organised crime, given its ties with corruption, violence and the like, it is often not placed on the agenda until scandals erupt, whilst research is not launched until a certain level of awareness has been reached.

As a result, empirical research is virtually absent within the member states. That is why awareness should be raised through studies into the scale and the nature of the problem.

In addition, the exchange of information appears to be a major bottleneck in the implementation of an administrative approach. The exchange of policing, judicial and administrative data is a precondition to an effective administrative approach. The existence of a European market and of so-called Euregions not only presupposes the exchange of information at the local and national levels but also at the European level, i.e. among member states. The European Union can play a constructive role in establishing a framework for the exchange of information among member states.

Types of activities involved in an administrative approach – Taking stock in Europe

Lecture by professor Vander Beken. Professor Vander Beken teaches at Ghent University (BE) and is director of the Institute for International Research on Criminal Policy (IRCP). He teaches various subjects relating to international and comparative criminal law and law enforcement. The current focus in his research is on organised crime and corruption, and the development of new methods for measuring and addressing these phenomena. He has conducted research projects commissioned by Belgian, European and international authorities and has acted several times as an expert to institutions and policymakers. He is one of the authors of a study into alternative/administrative approaches to organised crime in Belgium, the Netherlands, Italy and New York (2002) and one of the experts conducting a best-practices study in Sweden, Estonia and the Netherlands with regard to preventive legal measures against organised crime, a study commissioned by the European Council.

An administrative approach to crime may involve diverse *types of activities*. Authorities can for instance use their administrative powers to *respond* to illegal activities carried out by organised crime, for example by imposing administrative sanctions, and *prevent* illegal activities via administrative measures in order to reduce the scope of action for organised crime, for example through mandatory registration or urban renewal. They can also *prevent* organised crime from taking part in legal activities, for example by screening applications or excluding criminals from public procurement.

Europe hesitantly tends towards alternative approaches to organised crime. In 1997, the European Union indicated that it considered the prevention of organised crime, in complement to repressive penal action, an important part of its task (*Action Plan to Combat Organised Crime*, 1997). Since then, several other documents have been drafted which amongst other things call for the exchange

of best practices, and recently new regulations were adopted with regard to the exclusion from public procurement procedures. Several case studies in Europe demonstrate that all member states have, a least potentially, something ‘resembling’ an administrative approach, in other words, potential administrative instruments. This offers scope for *repression* through administrative law (economic legislation, tax law) as well as for the *prevention of illegal activities* (using public powers to discourage crime, for instance via training and information, urban development, cooperation between different public bodies) and for the *prevention of legal activities* carried out by criminal organisations (public procurement, licences, subsidies). In practice, administrative instruments offer various methods for preventing and punishing activities by criminal organisations. Existing best practices in the field of repression and prevention of illegal activities appear to be applicable throughout Europe. In short, different administrative approaches are not only possible, they are already in place and are encouraged by the EU.

Issues still to be resolved include how to shape the administrative approach in Europe and how to organise the exchange of information among member states, notably in view of preventing ‘legal’ activities by organised crime. There appear to be operational thresholds for information exchange among member states, particularly because of different legal regimes and the absence of national legal frameworks regulating the exchange of information that is vital to a national and local administrative approach.

Sweden is familiar with this problem. It lacks a legally enshrined system for the exchange of information for public procurement procedures. One of the conditions for an effective administrative approach is therefore that national legislations should be amended so as to make the information required by this approach available. Internationally, there are legal complications in European cooperation as well. For instance, in Sweden only private persons can be convicted, not legal persons, whereas in other member states legal persons can be convicted as well.

Experiences in Palermo: The cultural approach

Lecture by Professor L. Orlando. Professor Orlando is president of the Sicilian Renaissance Institute (SRI). The Sicilian Renaissance Institute (SRI) aims to foster civic renewal throughout the island and to provide information and inspiration to interested regions and communities around the world. Mr Orlando is former mayor of Palermo and has developed an alternative approach to combat organised crime.

One of the starting points of the fight against organised crime in Palermo is the promotion of a *culture of lawfulness*. Experience in Palermo and elsewhere shows that criminals and their organisations frequently use ‘identity’ and (basically positive) cultural values to justify their criminal activities. For instance, honour, family and friendship were common – Sicilian – cultural values diverted by the traditional Sicilian mafia in order to pursue as well as justify its criminal activities. This so-called *identity-based criminality* is a phenomenon occurring all over the world (from the Russian mafia to ETA terrorists). It implies that the roots of organised crime are often to be found in society itself: criminal organisations use the same values and standards as ordinary citizens. Organised crime is thus deeply entrenched in the cultural context of society. This means that in order to tackle *identity-based criminality*, a link should be established between a repressive penal approach and a social-cultural approach (an alternative/administrative approach). Society should be actively involved in the fight against organised crime. The cultural approach reveals that the link between culture and lawfulness is of crucial importance: the *culture of lawfulness* should constitute the background to any administrative approach. This for instance means that activities designed to fight organised crime should not take place *outside* but *within* society. The local community (schools, the business community, religious institutions, NGOs and the like) should be actively involved in the approach to crime and the promotion of a *culture of lawfulness*. However, this awareness appears to be largely absent, and a change in mentality is therefore necessary. In Palermo, this approach – which has become known as ‘the Palermo Renaissance’ – may rightly be called successful. It involves various activities, such as cancelling all contracts granted by the city to enterprises suspected of having ties with the mafia and subsequently re-hiring the employees of these enterprises, or activities organised at schools in view of promoting a *culture of lawfulness*. Compared with 300 mafia murders a year in the mid-1990s, about 7 murders are now committed annually. The mafia may not have been eradicated, but it is no longer predominant in the minds of citizens and society at large.

For documents on the *culture of lawfulness* see <http://www.sicilianrenaissance.info>

Experiences in the Netherlands: the Public Administration Probity in Decision-Making Act (BIBOB)

Mr Kuipers studied law at Utrecht University (NL). Since 1992, he has been working for the Dutch Ministry of Justice in various policymaking and management functions. He is currently manager of the Administrative Affairs Service, which is in charge of the implementation of several laws. He is also manager of ‘Bureau BIBOB’.

The “Public Administration Probity in Decision-Making Act” (BIBOB) has been in force in the Netherlands since 2003. This Act aims to equip the administrative approach to crime with a complementary instrument (grounds for refusal) and to guarantee the probity of the public administration through the exchange of information (screening). The BIBOB Act came into being after administrative organs drew attention to the fact that criminal persons had penetrated economic life and made use of administrative facilities. The Dutch authorities appear to spend a lot of time and resources on tracing and prosecuting organised crime, but at the same time they facilitate it. Before the Act took effect, administrative organs suspecting that a licence or subsidy was going to be used for punishable offences had few if any means for refusing or cancelling the application. The BIBOB Act applies to high-risk sectors – i.e. low-threshold sectors in terms of levels of training etc. – such as the catering industry or the construction sector. The Act sets forth possible grounds for refusal and cancellation of applications and subsidies and offers complementary public procurement information. The Act should be considered as *ultimum remedium* and constitutes no mandatory instrument for administrative bodies. An administrative body can apply the Act autonomously and can also seek advice from the national ‘Bureau BIBOB’, which has been operational since June 2003. The task of this bureau is to carry out probity investigations and to support administrative bodies in implementing and applying the Act. For this purpose, the bureau can investigate a large number of closed sources (police files, tax files etc.) and open sources. The administrative body can found its decision on a BIBOB opinion, but this is not mandatory: it is at liberty to weigh the different interests at stake. Upon refusal or cancellation, the parties concerned (applicants and third parties) have the right of inspection of their files. Given the sensitive nature of the BIBOB process (privacy), a committee has been set up to monitor whether the Act is properly administered. Practical experience shows that there are many divergences among administrative bodies when it comes to implementing the Act. Although the Act has not been evaluated yet, good initial results have been obtained. Awareness and administrative courage appear to be preconditions to effective implementation. The BIBOB instrument makes it possible to give concrete shape to the idea that administrative bodies should do something about organised crime.

Professor Ms E. Manunza. Elisabetta Manunza took her PhD in 2001 at the Vrije Universiteit Amsterdam (NL) with the dissertation ‘Problems with regard to EC procurement law for privatisations and the fight against corruption and organised crime’, in which she brings together both legal disciplines. Her dissertation qualified her for a grant for excellent researchers: in 2002 the NOW awarded her a research budget for an innovative three-year study, ‘Questioning the fundamental legal and economic presuppositions underlying the EC Public Procurement Directives’.

The main question put forward by professor Manunza concerns the extent to which an administrative approach can constitute an effective alternative or complementary instrument to the penal approach in the fight against organised crime. The answer to this question is not unambiguously ‘yes’. The EU procurement directives contain several complications, whilst legal issues persist which hamper the applicability of European legislation. One of these complications is that several members states attach a different qualification to the same type of offence. The first step towards an effective administrative approach is therefore a consensus on definitions of organised crime and criminal activities at the EU level.

In view of establishing a free European market, EU public procurement directives seek to curtail members states’ freedom to define their own grounds for exclusion. That is why the directive also presents an exhaustive list of grounds for exclusion. So to what extent does the directive allow members states to apply their own grounds for exclusion? To what extent can member states exclude bidders through preventive administrative screening? The answer to these questions is not unambiguous and depends on the concrete situation. An important factor in this respect is the definition of offences (‘organised crime’): the narrower this definition is, the more difficult exclusion will become. The awareness of the problem of organised crime is important as well; the greater the awareness in a member state of the threats of organised crime and the necessity to respond, the stronger a court case will be. Finally, it is important that the exclusion file should be founded on a solid basis: this increases the chances of success in court. However, it remains unclear how much scope is left for the member states’ own legislation. A proactive attitude by member states towards combating the abuse of public procurement by organised crime is highly desirable, as is a uniform application of the directive by the members states.

Directive 2004/18 also presents complications in terms of content. Although a number of improvements have been made to the framework for the fight against organised crime (for instance, some grounds for exclusion have become mandatory), there are several restrictions as well. A major

restriction is that conviction is a precondition to exclusion. However, although excluding convicted criminals is necessary, it is not sufficient. An effective administrative approach should make it possible to exclude people on the basis of well-founded suspicions of participating in criminal activities or organisations. Greater clarity is also needed as to the meaning of different concepts, and this can be achieved by harmonising legislation at the EU level. Differences in application among member states may impede the fight against transnational organised crime.

Mr M. Nötzel. Chief Prosecutor, Office of the Prosecutor General in Munich (DE), head of the Organised Crime department. Co-author of the ‘Handbook for Prosecutors’ and ‘Fighting Corruption – A Handbook’.

Mr Nötzel argues that an administrative approach to public procurement is of great importance. It often happens that when penal law is applied to public procurement issues, this has been preceded by many administrative mistakes. An administrative approach is therefore of capital importance if penal law is to become more effective. Mr Nötzel distinguishes three types of organised crime: illegal markets (human smuggling, women trafficking), enterprises engaging in organised crime in view of profit-making (using the legal infrastructure) and illegal organisations which seek no profits for their own enterprise but only use it for laundering criminal money. Administrative measures are particularly suited for tackling this third type of crime.

The city of Munich encountered serious cartelisation problems in the construction sector, which had a very well organised system of price-fixing agreements. Since 1996, Munich has undertaken various activities to cope with this problem. There is a handbook for civil servants detailing the way in which building companies operate and including a code of conduct, whilst a blacklist has been compiled of excluded companies. In addition, a hotline was set up to collect reports of transgressions and transfer relevant information to the Public Prosecutor, whereas legislation was passed which provides for obligatory reporting of suspicious (financial) activities to the Public Prosecutor. In addition, it has been agreed that enterprises can be excluded from public procurement if one or more employees are seriously suspected of criminal activities (‘joint responsibility’). In contrast to the EU directive, conviction is not the basic criterion in Munich. The main argument for this approach is that it is hardly practicable to ‘re-punish’ a person who has already served a sentence by excluding him from public procurement forever.

The administrative approach to public procurement appears to be an efficacious instrument in Munich. In this city of one and a half million inhabitants, this approach has led to 2000 reports of possibly shady activities over the past few years. Some 1600 of these reports were investigated, with 800 parties being sued. In total, Munich collected 75 million euros in fines thanks to this approach.

In spite of the positive Munich example, many operational questions remain unsettled as to the possibilities of an administrative approach to public procurement. How do you deal with persons awaiting their conviction? How should blacklists be established? How do you obtain the information required for public procurement? What is the scope of your refusal: do you only refuse

the local organisation or person concerned, or the broader organisation? For how long should an organisation remain excluded?

A Euregional approach: options and hurdles

Mr G. Leers. Mayor of Maastricht since 1 February 2002. In addition to his function as regional manager of the *Zuid Limburgse Regionale Politiekorps* and his presidency of the *Zuid Limburgse Brandweer/GHOR*, he is chairman, member of the board or representative of several organisations with activities ranging from national, regional and transnational counselling to international cooperation.

The region of Limburg is a good example of a Euregion. It is characterised by a high degree of urbanisation and intensive cross-border movements. Crime figures are relatively high. Drugs-related crime is one of the main problems, together with human trafficking and smuggling in the border area with Belgium. In short, it is a region where cross-border networks of criminals are highly active. The fact that legislation and regulations differ among countries stimulates the creation of illegal markets. This makes the harmonisation of legislation and regulations imperative and requires countries to agree on their priorities. This kind of harmonisation is still in its infancy, although there has been cooperation with neighbouring countries in penal law since 1969. This harmonisation is effected through different bodies, for example a support agency for cross-border cooperation and structural consultation among police services and Euregional investigation teams. Experience shows that cross-border cooperation is crucial to the fight against organised crime. In spite of examples of good cooperation, many (operational) hurdles to effective cross-border cooperation in an administrative approach persist, differences in regulations being among the biggest obstacles. Criminals are not stopped by borders, so Euregional cooperation is vital if the problem of organised crime is to be tackled. National legislation should create more room for differentiation so that a local and regional response can be given to local circumstances. In practice, the legislation of neighbouring countries is equally (and sometimes more) important in Euregions than the country's national legislation. Finally, there is a need of cooperation pilots in the Euregions. Europe could again play a supportive role in this respect, for example by making best practices accessible and by (co-)financing pilots.

At the national level as well, there are various hurdles to an administrative approach to crime. For instance, the compartmentalisation of public services makes it difficult to elaborate a coordinated approach. At the same time, an instrument such as the BIBOB Act offers promising prospects: the Act creates greater scope of action for reinforcing the information position, which is crucial to an

effective approach. The current licence database is now being screened, whilst bidders for public procurement have to complete detailed questionnaires. Activities are undertaken to guarantee and if necessary improve the internal probity of the municipal organisation. Internal probity is one of the preconditions for a successful administrative approach to organised crime.

Mr B. Frederick. Police superintendent, Chief of the Judicial Team, Local police of Liege.

Complementing the presentation by mayor Leers, Mr Frederick states that an effective alternative (administrative) approach to organised crime in the Euregions depends on the political and administrative will to cooperate. In spite of complications and hurdles resulting from differing legislations and regulations in member states, concrete situations require a response. That is why political and administrative courage is so important. In addition, Euregional cooperation also implies a preparedness to become acquainted with each other's cultures and methods.

Ms M. Kalliali, First-officer analyst, Analysis Unit, Europol.

Although Europol endorses the necessity of an administrative approach and a good information position, it currently sees no larger role for itself in an administrative approach to crime. Europol focuses mainly on repressive activities. Prevention is only a minor component of its activities. However, the exchange of information is one of the core tasks of Europol. Still, not all information is accessible or useful. Europol Infosystems, which is currently under development, will be an administrative screening instrument. Europol is therefore likely to play a role in a European administrative approach in the future, of course depending on the member states and their internal organisation (laws and regulations, the organisation of information).

The Amsterdam approach: transparent and smart

Mr J. Cohen, Mayor of Amsterdam. Among other things, Cohen served as Deputy Minister of Education and Science, was rector of Maastricht University and served as Deputy Minister of Justice. In 2001, Mr Cohen was installed as Mayor of the City of Amsterdam.

For several years now, the Amsterdam municipal authorities have been cooperating with the police and with the Ministry of Justice, and in some cases with the tax authorities, in the fight against organised crime. What is particular to the Amsterdam approach is that a team of municipal civil servants have been given special powers to inspect police and public prosecution files under certain

circumstances ('Van Traa Team'). Many projects have been organised in the red-light district, such as the purchase of real estate as part of a geographical approach and the fight against the criminal use of premises as part of a branch-oriented approach. Sixty buildings have been bought and are now occupied by bona fide companies. The project thus encourages a bona fide economic structure and social safety in a vulnerable (prostitution) zone. In addition, the municipal authorities have right of pre-emption on premises put up for sale. This has proved a successful approach which, combined with police information, helps to prevent criminals from establishing themselves in the district.

Other projects such as the action against criminal illegal foreigners in cooperation with the police or the implementation of the BIBOB Act have also produced positive and visible results.

Police and judiciary tend to focus on individual offenders, municipal authorities on locations and enterprises (for instance with regard to licences). The penal approach pursued by police and judiciary can therefore be complemented with the municipal authorities' administrative approach. The example of Amsterdam shows that the administrative approach to crime has an important role to play in the fight against organised crime. European cooperation among the member states' public administration, police, judiciary authorities and inland tax authorities can make a major contribution towards the fight against organised crime at the European level.

The guided tour through Amsterdam met with a lot of positive reactions. The "Wallen" district has changed from a *no-go area* into a (relatively) safe district.

The EU and the administrative approach to crime

Mr Vollprecht, Directorate-General of Justice and Home Affairs of the European Commission.

The framework of the fight against organised crime within the EU is based on the concepts of freedom, safety and justice. The prevention and the repression of organised crime constitute the spearheads of this framework. In the past few years, the EU has drafted several political directives, action programmes and the like. The starting points of the approach are a multidisciplinary nature, coherence and prevention, in complement to repression. The EU is now witnessing a shift from a repressive penal approach to a preventive one, including the administrative approach. Moreover, various measures are being taken to harmonise the penal branch. This process is monitored by new institutions such as Europol and Eurojust and the future European Public Prosecutor.

Internationally, the EU has signed the UN Transnational Organised Crime Convention and the UN Anti-Corruption Convention. In addition, the EU distributes non-legal information material (policy documentation on information exchange, different types of organised crime etc.), it has set up a platform for the exchange of best practices in the prevention of organised crime, takes part in

international bodies and commissions studies into organised crime.

The fight against corruption features high on the European agenda as well. Several international instruments have been introduced over the past few years, whilst the recently adopted UN Convention on Corruption offers new elements assisting the fight against organised crime. It is this domain that has elements in common with an administrative approach, on the one hand because it directly involves the public administration, and on the other because an incorruptible public administration is a precondition for an administrative approach to organised crime. Corruption is one of the ways in which the underworld penetrates the upper world. The commitment of the public administration to the fight against corruption is essential.

As for European-level exchange of information for screening purposes, there is no consensus among the different member states, according to the EU. The EU also endorses the necessity of data collection (including reliable crime statistics) in order to better assess the nature and the scale of the problem of organised crime in Europe.

On the whole, there is a discrepancy between the perspective of the first pillar (the ‘economic’ orientation) and the third pillar (the ‘criminal’ orientation): this results in different views of the approach to organised crime. Experts fear that the failure to harmonise these two pillars will hamper the fight against organised crime because of the different interests involved. The EU acknowledges the existing compartmentalisation and the discrepancy it sometimes causes between different views and interests in EU member states. It therefore seeks greater (interdepartmental) coordination among the member states as well as within the Commission. In the first pillar, there’s inadequate awareness of the threats posed by organised crime, and divergent interests are at stake. Different instruments are used for guaranteeing the fight against organised crime, such as crime-proofing of legislation, products and services. In spite of the existence of different interests, the issue of organised crime features high on the EU agenda.