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Focus on
the threat of economic crime

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The opinions expressed in this technical report do not necessarily reflect official positions of the Council of Europe.

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Summary and threat assessment

Organised crime, corruption and other forms of economic and serious crime will remain priority concerns of European societies in the years to come. The heads of states and governments participating in the 3rd summit of the Council of Europe (Warsaw, 16 - 17 May 2005) therefore tasked the Council of Europe to further develop its activities in these fields. The purpose of the 2005 organised crime situation report thus is:

- To point at new threats and major issues of concern
- To help policy makers in Europe make more informed decisions on anti-crime policies.

In addition to an assessment of the overall organised crime situation, the 2005 report contains a topical a chapter on the question of economic crime. Given the serious impact of economic crime on societies and its links to corruption and organised crime, this topic is highly relevant.

The chapters on the organised crime situation have been prepared by the Department of Crime Problems (Directorate General of Legal Affairs) of the Council of Europe, while the part on economic crime was written by Professor Michael Levi (Cardiff University, United Kingdom), Dr. Nicholas Dorn (Cardiff University, United Kingdom) and Professor Leonid Fituni (Centre for Strategic and Global Studies, Moscow).

THE THREAT OF ORGANISED CRIME

THE ENVIRONMENT OF ORGANISED CRIME

The United Nations Convention on Transnational Organised Crime reflects a globally agreed upon concept of organised crime. Nevertheless, ambiguities remain, rendering analyses of organised crime and reporting on the organised crime situation in the 46 member States of the Council of Europe rather difficult.

Security continues to be a primary concern in many societies around the world, in particular following the terrorist attacks in Spain, the Russian Federation and Turkey in 2004, and in the United Kingdom and Egypt in 2005. Surveys suggest that Europeans are particularly anxious about their safety. Terrorism and the general feeling of insecurity will continue to influence crime policies, and generate controversies over the balance between security and fundamental rights and freedoms.

The occasional linkage – or even amalgamation – of the concepts of organised crime and terrorism adds further ambiguities, sometimes generating a misleading connection between terrorism and particular methods by which it is financed or conducted. Organised crime and terrorism are – a priori – distinct concepts. Organised crime is primarily aimed at obtaining financial or other material benefits, while terrorism relies on violence-induced fears to change established legal and constitutional orders and policies. This does not exclude certain similarities and links between organised crime and terrorism, with crimes helping to finance terrorism and some terrorist movements being almost a front for organised crime.

A crucial development in 2004 has been the enlargement of the European Union by ten new members on 1 May. There have been concerns that open borders would lead to more crime within the "old" European Union. It would seem this has not been the case, and that the number of suspects from eastern Europe may have remained stable or even has decreased in some instances. Information available so far supports the thesis that borders are more beneficial to criminals than to criminal justice and law enforcement.

European countries share many common features and values, but at the same time also reflect asymmetries in terms of human development and governance. Such differences are likely to persist and will favour organised crime.

Corruption remains a key issue in Europe and an important factor supporting organised crime as well as economic crime. In 2005, more reports on corruption within the private sector have been noted. Attempts by criminals to exercise undue influence on political actors is not a new phenomenon, but gain in significance as regulatory risks increase, leading to more economic crime that may go undetected. Thus, concerns about the impact of corruption on democracy in Europe are likely to move higher on the European agenda in the near future; and increasing attention should be paid to the question of "political finances" – including the financing of political parties and electoral campaigns – and the question of political corruption in general.

Globalisation will continue to facilitate organised crime, and in particular economic crime at transnational levels, if no adequate safeguards are put in place. The capacity of national governments to respond to transnational and rapidly changing challenges is limited. Concerted efforts at European and international levels are required.

In 2004/2005, measures were taken to further reinforce the international framework for the control of organised and other forms of serious crime. For example, three new treaties were opened for signature by the Council of Europe in May 2005:

- The Convention on the Prevention of Terrorism (CETS 196)
- The Convention on Action against Trafficking in Human Beings (CETS 197)
- The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198).

An increasing number of tools is thus available, but they will only show the desired impact if they are fully ratified and efficiently implemented by member States.

CRIMINAL ACTIVITIES

Organised crime in Europe takes many forms and involves a large variety of criminal activities. However, there are certain crime markets which are common to and considered to be major threats in most European countries:

1. Economic crime

Economic crime is one of the main fields of organised criminals in Europe and, in terms of proceeds generated and material damage caused, is considered the most important activity of organised crime (see below).

2. Drug production and trafficking

Europe is probably the most profitable drug market globally. With a rate of 0.5 %, Europe seems to be the region with the highest prevalence of heroin users globally; and prevalence is particularly high in eastern Europe (such as in Latvia and the Russian Federation). With regard to cocaine, the prevalence rates of some European countries are also among the highest in the world (in particular of Spain and the United Kingdom). The use of amphetamines (for example in the United Kingdom, Estonia and Denmark) and ecstasy (Czech Republic, United Kingdom) is high or above average in global comparison. Within the European Union (25), between 1.2 and 2.1 million people in the age group 15-64 are

defined as "problem drug users". Between 0.85 and 1.3 million of them are injecting drug users.¹

Drug trafficking is considered one of the most significant activities of organised crime groups and networks in Europe, and the primary problem – at least in terms of numbers of cases recorded – in Armenia, Croatia, Czech Republic, Germany, Monaco, the Netherlands, Norway, Poland, Spain and the United Kingdom.

3. Trafficking in human beings

People are exploited as a commodity by organised crime primarily in the forms of trafficking in human beings and smuggling of persons, and both forms have serious human rights implications.

Often ignored in the past, trafficking in human beings is now reported to be an important activity of organised crime in about half of the member States. Although there are many forms of exploitation, in Europe – according to reports received – most victims of trafficking are women and girls who are exploited for sexual purposes. It is therefore no coincidence that the large majority of victims are found in the prostitution sector, and the share of migrant sex workers appears to be ever growing. Most victims in Europe are from Council of Europe member States. Countries such as Bulgaria, Moldova, Romania, the Russian Federation and Ukraine are mentioned particularly often as countries of origin. Children reportedly account for a considerable share of victims, including in the form of child pornography on the internet.

In 2004 and 2005, in many parts of Europe, the number of investigations into trafficking in human beings continued to rise, such as in Belgium, Bulgaria, France, Hungary, Moldova, Poland, Romania, Ukraine. Considerable increases in the number of convictions for trafficking in human beings have also been noted. In south-eastern Europe – a region notorious for trafficking in recent years – trafficking in human beings appears to be declining, or at least has become less visible.

4. Smuggling of persons

According to the International Organisation for Migration, of the 130 million international migrants globally, some 20 to 40 million are irregular migrants, and at any time about 4 million irregular migrants are on the move. Europe is an attractive destination. Some 300 to 450 thousand irregular migrants are believed to enter the well-off countries of western Europe annually. At the same time, requests for asylum in Europe in 2004 reached the lowest level for 20 years; and data related to the first six months of 2005 show a further decrease.

In Europe, the smuggling of persons – as one expression of illegal migration – is a politically highly charged issue and has been on top of the European Union's agenda for some time, among other things in connection with EU enlargement, the free movement of people and access to labour markets, but also with xenophobia and racism.

For 2004/2005, an increasing number of European countries report on organised crime in connection with the smuggling of persons. These reports suggest a strong role of organised crime groups and networks with growing sophistication in the means used for smuggling, as well as cooperation of different local criminal groups along the smuggling routes.

¹ Data according to UNODC 2005 and EMCDDA 2004.

The continued use of vessels for the smuggling of persons from northern Africa to Europe across the Mediterranean Sea claims an ever growing number of lives. Several hundred people die every year between northern Africa and southern Europe on their journey, and more than 5,000 reportedly died over the last ten years.

5. Cybercrime

Societies all over the world rely on information and communication technologies (ICT). The number of Internet users worldwide almost tripled from 300 million in 1999 to some 890 million in 2005, including about 260 million in Europe, and e-commerce is "coming of age" in Europe as well. Societies are thus highly dependent on ICT and vulnerable to attacks. Though one cannot vouch for their accuracy, estimates of the global economic damage from digital risks doubled from US\$ 250 billion in 2003 to US\$ 500 billion in 2004. Throughout the world threats to confidential personal and financial data – in the form of phishing attacks and Trojan horses – grew considerably in 2004 and 2005. The continued spread of spams, and a dramatic rise of bots and botnets is being reported.

The assumption that – by volume if not by economic and social damage - most cyber criminals are individual offenders, often juveniles and young adults, is probably still valid. At the same time, reports on organised forms of cybercrime have become more frequent in 2004 and 2005:

- Distributed denial of service attacks are carried out with the aim of extortion of targeted companies. In this way, a traditional market of organised crime, the protection racket, is going online.
- Attackers using botnets are often highly skilled and organised and thus possibly part of organised criminal structures.
- Organised cyber criminals steal, buy and sell millions of credit card numbers and identification documents and threaten electronic commerce.
- Organised criminals infect millions of computers and sell them as spam proxy server and hosts for websites for selling pornography, pirate software or fronting as fake banks and for identify theft.
- Child pornography seems to have become an important activity of organised criminals, with criminal networks sharing child pornography online and operating fee-based sites.

It would seem that the hypotheses formulated in the 2004 situation report are being confirmed. While prior to 2004 organised cybercrime was rather rare and a potential risk, the exploitation by organised criminals of the economic opportunities offered by the Internet and of the dependency of societies on ICT appears to have become a reality.

6. Money laundering

In addition to the above, a range of other crimes are committed by organised crime groups and networks – such as extortion, theft, smuggling of cultural property, contraband smuggling, smuggling of arms and others. However, the pursuit of profit is the common denominator of all organised crime and of most other forms of serious crime. Above a moderate income level, criminals need to launder the proceeds from crime in a way that they become indistinguishable from legitimate money.

Europe is a major stakeholder in global money laundering as both a source and a destination of criminal proceeds, and – through its financial markets – as an actor in different stages of the money laundering process. In 2004, the number of suspicious transaction reports received by financial intelligence units continued to grow in most countries, such as in Belgium, France, Germany, Liechtenstein, Netherlands, Ukraine and

the United Kingdom. With economic crime gaining in importance, fraud and embezzlement make up a large part of money laundering investigations, at least in countries with an all-crimes approach, as reported from Belgium, Romania and the Russian Federation.

ORGANISED CRIME GROUPS AND NETWORKS

Criminals collaborate in many different ways, depending on the criminal activities they are involved in. Some groups and networks specialise in one field of crime. However, information related to 2004/2005 suggests that more and more groups and networks are engaged in two or more fields of crime.

The types of criminal organisation found in European countries include traditional pyramidal organisations, family firms, ethnically closed and homogeneous groups, structured networks, rather loose and fluid networks, hybrid models and others. It appears that network-type organisational forms are now more widespread in Europe than the traditional pyramidal groups.

The use of violence and intimidation is often used to ensure discipline within criminal groups but also is intrinsic to certain crimes such as extortion, trafficking in human beings and drug trafficking. However, coercion nowadays seems to be less important than symbiotic relationships nurtured by corruption and other forms of influence on the public administration, politicians, the criminal justice system or the media.

The majority of significant criminal groups and networks make use of legal commercial structures and legal professionals to cover and support their criminal activities. As criminals encroach on the legal institutions of society by investing their proceeds in legal commercial entities, the boundaries between legal and illegal structures of societies become increasingly blurred. Obviously, this poses considerable challenges to the rule of law. The ever stronger involvement in serious forms of economic crime of (a) organised crime groups and networks and (b) businesses established for legitimate purposes, further add to this.

ECONOMIC CRIME – A THREAT FOR EUROPE?

The acceleration of economic globalisation since the 1980s multiplied the opportunities for economic crime in Europe. In the former communist European states, the opportunities for crime are related to privatisation, export of raw materials, and emerging financial and banking sectors, accompanied by capital flight, tax evasion, bankruptcy fraud, corruption, money laundering and organised crime. Following the multi-billion Euro financial fraud and misconduct schemes such as Enron, WorldCom, and Tyco International which – though based in the US – had an impact on European investors and consumers, the Parmalat scandal at the end of 2003 showed that supervisory failures and economic crimes of vast magnitude are also possible in Europe. They also demonstrated the importance of avoiding a frame of mind in which one looks only towards the organised crime underworld for serious economic crime threats.

THE CONCEPT OF ECONOMIC CRIME

While economic crime appears to dwarf the cost of all other forms of crime, a clear and widely agreed upon definition is lacking. In 1981, the Council of Europe adopted a Recommendation on Economic Crime² listing 16 specific and non-specific offences which are considered economic crimes. These include different types of fraud, cartel offences, fiscal

² Recommendation R(81)12 on Economic Crime adopted by the Committee of Ministers on 25 June 1981.

offences, offences related to currency regulations, bogus firms, stock exchange and bank offences, unfair competition and others. The Recommendation is based on the assumption that economic crime has an adverse impact beyond individual victims and the material damage in that:

- it affects a large number of persons, society and the state in general,
- it damages the functioning of the national or international economy, and
- it causes a loss of trust and confidence in the economic system.

However, European countries continue to use different definitions or enumerate different types of crimes as economic crimes; comparisons are therefore difficult. And even from the minority of transgressions that are reported or identified independently, many may not appear in police and criminal justice statistics: regulators favour giving guidance and quiet advice, possibly backed up by administrative or civil actions, with prosecutions as a last resort. Furthermore, law enforcement agencies place stronger emphasis on offenders and fields which are more likely to cause a high level of external visible harm, while auditors focus on reducing risks which are internal to a business or institution. It may be impossible to know whether an increase in the number of economic crimes recorded is a reflection of actual increases in crime or of increased attention by law enforcement, regulators and others to this particular problem. For example, the widening of money-laundering reporting obligations provoked greater reporting of frauds and tax evasion by financial institutions and professionals, but this may not reflect increased fraud. A particular difficulty for the preparation of an annual situation report is that not only do the length of frauds differ markedly but the speed with which they come to light varies, with frauds from lost and stolen cards being discovered more quickly than "cloned" cards; and these, in turn, are much quicker to detect than complex accounting frauds such as Parmalat: thus working out what happened "in" 2004 is hard to deduce from what was dealt with in that year.

ECONOMIC CRIME VERSUS CRIME IN GENERAL

Given the above mentioned conceptual problems, economic crime statistics must be considered with caution. In terms of numbers of cases recorded, prosecuted or adjudicated, economic crimes in most European countries account for an important, but not the most important category of crime. For example:

- In Germany in 2004, fraud, breaches of trust, insolvency offences and competition offences combined amounted to over 1 million cases or more than 15% of all offences recorded. However, using the definition applied by the police, namely that such offences would need to cause damage beyond the individual victims (for example to the economic system in general) or require specific commercial skills, only 94,743 cases (or 1.43% of the total) are considered economic crimes.
- In the Russian Federation, 402,300 cases of economic crime were registered in 2004: about 13% of all recorded crimes.
- In Sweden, some 70,000 cases (or 5.6% of recorded offences) were related to fraud, tax offences, embezzlement and breach of trust, crimes against creditors, currency counterfeiting and others. However, in a more narrow sense – crimes against creditors, book keeping and tax offences – less than 13,000 offences (about 1% of all crimes) were considered economic crime.

KEY AREAS OF ECONOMIC CRIME EUROPE

Across Europe, frauds such as embezzlement and breach of trust are – alongside tax frauds – the most widespread forms of economic crime:

- In Germany, in terms of numbers, fraud related to financial credit for commercial activities in connection with commodities, services and financial services accounted for 40% of the 94,743 cases of economic crime in 2004. Insolvency offences accounted for 16%, offences in connection with employment for 15%, offences related to investment and financing for 13%, fraud and breach of trust connected with investments for 11%, competition-related offences to 5%.
- In the Russian Federation, fraud (13%), embezzlement (13%), customer fraud (20%) and counterfeiting of money or securities (7%) are the main types of economic crime.
- In countries of south-eastern Europe (Albania, Bosnia and Herzegovina, Croatia, Serbia and Montenegro and “the former Yugoslav Republic of Macedonia”) tax and customs fraud – also related to the creation of fictitious companies and fraudulent bankruptcy – and fraud related to financial credit are important categories.
- In Sweden, fraud and fraudulent conduct by individuals are widespread, but crimes against creditors, book keeping offences and tax offences are considered the main economic crimes.

Moving away from recorded offences, 42% of firms in western Europe and 47% in central and eastern Europe reported to be victims of fraud in 2005; an increase of 13% and 21% respectively when compared to 2001. Globally, asset misappropriation (by 62% of companies), false pretences (47%), and corruption and bribery (24%) are the incidents most often reported. Corruption and bribery is more often reported from central and eastern Europe while financial misrepresentation (false accounting) more often from western Europe.³

Corruption is a major tool facilitating economic crime throughout Europe. Sometimes, this may be to avoid incrimination but it may also facilitate VAT evasion, Missing Trader IntraCommunity offences, and intellectual property offences. It increasingly includes private sector corruption to obtain contracts, as reflected for example in recent allegations reported in Germany (Volkswagen, Infineon, Mercedes, BMW), as well as the more “normal” obtaining of construction and other contracts by economic actors linked to or acting as fronts for more traditional organised crime groups and networks.

With regard to fraud against the interests of the European Communities in 2004, fraud related to structural and cohesion funds amounted to EURO 695 million (71% of the total notified by EU member States to the European Anti-Fraud Office, OLAF), fraud related to “traditional own resources” to EURO 206 million (21%), and fraud related to agricultural expenditure to EURO 82 million (8%).

Payment card fraud continued to be a serious problem in 2004. Most such frauds are internal to the countries (though in some countries in transition and holiday destinations, tourists may be targeted). However, there has been a trend towards identity frauds, though it is important to have a consistent definition of this. As yet, despite a move towards cards with PIN chips throughout Europe, the magnetic stripe continues to be vulnerable to fraudulent re-encoding – often involving dishonest merchants – and employees assist in revealing information about accounts that can be used to exploit debit cards.

³ PriceWaterhouse Coopers Global Economic Crime Survey 2005.

As indicated above, cybercrime – and increasingly computer-related fraud – cause several hundred billion Euros in economic losses globally. Reports show, for example, that while in previous years only 4% of cyber attacks were targeted at e-commerce, by July 2004 some 16% of attacks were aimed at e-commerce and were presumably driven by economic motives.⁴ Throughout the world threats to confidential personal and financial data – in the form of phishing attacks and Trojan horses – grew considerably in 2004 and 2005. With regard to copyright offences, the share of pirate software among users in Council of Europe member States in 2004 ranged from 25% in Austria to 87% in Russia and 91% in Ukraine.

Counterfeiting of other commodities is also significant: in 2003-2004, 54% of bulk commercial cigarette seizures by the United Kingdom's HM Customs and Excise were counterfeit, compared with 41% in 2002-2003 and 15% in 2001-2002.

Throughout Europe, the majority of detected offenders are nationals of the country where economic crimes are committed, although many of them have transnational connections.

THE DAMAGE

Recorded economic crime may not represent the largest category of crime in European countries by number of cases, but the economic and social damage is disproportionately high. The losses – like those for other types of crime – have to be seen in the context of affordability criteria such as GDP (both per capita and of the groups affected). The emotional effects are not captured in pure financial data and some identity and investor/telemarketing frauds have devastating consequences in terms of life opportunities and broken dreams, as well as undermining trust (especially where there is no government or industry-wide compensation scheme):

- According to a recent survey, for companies that were victims of fraud, the direct ("tangible") average cost of fraud per company amounted to US\$ 1.7 million over a period of two years. This does not take into account the "collateral damage" from economic crime on business relations, workforce morale and branding.⁵
- In the United Kingdom, cigarette smuggling in 2003-04 was responsible for €3 billion in lost revenue from tax and duty, while a further €1.1 billion was lost as a result of smuggled hand-rolled tobacco. Smuggled cigarettes accounted for 15% of the United Kingdom market. An additional €400 million was lost from smuggled alcohol and €550 million from smuggled dutiable fuel oil. Missing trader fraud losses fell, however, due to tightened procedures.
- In Germany, economic crimes account for only 1.4% of all crimes recorded but for more than 55% of the material damage. However, immaterial damages are considered to be even more important, in particular in terms of distortion of market competition, the impact on other companies linked or depended on those committing crimes, the damage for society by offences against environmental, food, labour security and other laws, and the possible loss of confidence in the functioning of the economic and social order altogether.
- In Serbia, the material damage of economic crime in 2003 was estimated at €300 to 500 million.

High-profile cases in recent years – such as Enron, Parmalat, Vivendi Universal, Tyco or WorldCom – attracted attention of the public and criminal justice to economic crime. The frauds were facilitated by poor accountability, weak audits and regulators, corruption and alleged complicity by banks. The material damage was billions of Euros but risk of systemic

4 Symantec Internet Security Threat Report VI (January – July 2004).

5 PriceWaterhouseCoopers Global Economic Crime Survey 2005.

economic damage due to loss of confidence, though hard to calculate, is one reason that led the Basle Group to develop risk-based criteria for financial institutions. Another lesson learned is that even cases that do not end with a criminal conviction may still cause considerable damage in terms of a weakening of public confidence in business, as experienced in Germany in the Mannesmann/Vodafone case.

While economic crime is a significant problem in the wealthier countries of Europe, it is not believed to have yet reached proportions which would threaten the stability of economic and social systems. The situation is different in the younger economies of central and eastern Europe, where economic crime leads to a significant loss in public revenues, undermines the development, stability and functioning of market economies and discourages foreign direct inward investment.

ECONOMIC CRIME AND ORGANISED CRIME

A distinction between economic crime – as “white collar crime” by otherwise legal businesspeople who are tempted to take short cuts – and organised crime (as “black collar crime” by criminals who operate on illicit markets such as drugs) would be artificial and only deal with a small part of European reality today. A great number of organised criminals are less involved in predatory crimes such as theft, kidnapping, contract killing and extortion but rather operate like regular businesspeople investing in the legal economy, exploiting business opportunities and analysing cost, benefits and risks. Similarities are also apparent in the way criminal and legal businesses are structured. In the modern knowledge economy, hierarchy and inflexibility work neither for legal nor illegal businesses and, despite the power and scale of multinationals, most criminal and legitimate firms operate in looser networks. The starting point may be different: criminal groups and networks are set up for the purpose of committing crimes, while legal enterprises are established a priori to do legal business but then may turn to fraud, corruption and other illegal practices.

In practice, as fraud and other forms of economic crime and criminal behaviour (including private sector corruption) spread, and as organised criminals invest their proceeds into the legal economy, legal and illegal markets and activities increasingly overlap, merge and shade into each other. It may thus be more realistic to consider organised crime as being a sub-set of the broader category of economic crime.

In line with this, European countries increasingly report on different forms of economic crimes in their assessments of the organised crime situation. These include in particular:

- Value added tax fraud as reported by a number of EU countries, including “registered and unregistered evader fraud” in cash based businesses, “thief fraud” by setting up bogus company registration to steal VAT; and in particular missing trader intra-community (MTIC) fraud, that is, VAT carousels.
- Fraud in connection with public procurement and accompanied by corruption, cartel formation, intimidation and violence to monopolise access to public contracts.
- Fraud related to privatisation. In several countries of the former Soviet Union and south-eastern Europe, the power of organised crime groups and networks is based on assets acquired during the process of privatisation primarily in the 1990s under unclear conditions and reportedly with the involvement of political leaders and state officials
- Investment fraud involving non-existent companies and fictitious commodities and services, which move between European countries depending on police/regulator attention levels and target investors everywhere.
- Counterfeiting of legal products as a highly organised business managed by international entrepreneurs.

The trend towards "organised economic crime" is not limited to specific regions but can be observed across Europe:

- In Germany, 12% of organised crime cases recorded in 2004 were related to economic crime. These 12% of cases generated 45% (or EURO 603 million) of the estimated profits of all organised crime (EURO 1.33 billion). The main activities were credit, investment and public procurement fraud. Most offenders were Germans.
- In the Netherlands, more than 30% of criminal investigations of organised crime in 2004 involved fraud, primarily fraud related to turnover tax, excise duty and VAT. 61% of offenders were from the Netherlands, but many of them cooperated with suspects based in other countries such as Spain and the United Kingdom.
- In the Russian Federation and some other countries such as Georgia, predatory and violent crimes continue to be carried out by the lower stratum of the criminal population, but are supplemented by smart and more sophisticated forms of crime, in particular economic crime. Targets are in particular the fuel and energy sector, the production of and commerce in counterfeit alcohol, cigarettes and consumer goods, transnational trade and financial services, precious metals and stones, public procurement at all levels, fraudulent bankruptcy and fraudulent misappropriations and aggressive takeovers of titles to property. The "legalisation" of illicit businesses and assets currently is a major preoccupation of organised criminals and businesspeople.
- In south-eastern Europe, economic crime accounts for a significant number of cases linked to organised crime, in particular in relation to tax and customs fraud, public procurement, privatisation, bank fraud, and counterfeiting of legal products. Increased attention is also paid to the problem of money laundering. Albania reported 17 cases and Croatia 14 cases of "organised economic crime" in 2003. Bosnia and Herzegovina reportedly loses of hundreds of millions of Euros annually to "organised economic crime": in 2004, 907 cases were prosecuted, leading to the conviction of 212 perpetrators. In Kosovo, almost 5,000 cases of economic crime were recorded but only 3 cases were clearly linked to organised criminals in the conventional sense.

As stated above, economic crime is one of the main markets of organised criminals in Europe, and in terms of proceeds generated and material damage caused probably the most important activity of organised crime.

CONCLUSIONS

Economic crime accounts for a significant share of material and immaterial damage caused by crime in Europe. It reinforces the adverse economic and social impact of globalisation on European societies. It undermines the functioning of economic systems, in particular in central and eastern Europe. And it generates considerable concerns with regard to democracy and the rule of law throughout Europe.

Economic crime and organised crime share many characteristics and follow a similar logic based on the pursuit of profits and the exploitation in particular of the opportunities offered by globalisation and asymmetric governance. With legal and illegal markets increasingly shading into each other, organised crime may be considered a sub-set of economic crime rather than a fully separate category of crime. An issue arising in this connection is whether the special techniques available to law enforcement for the investigation of organised crime should also be made available to investigate economic crime.

Economic crime levels are a reflection of (a) motivations and skills, and (b) opportunities, which are affected by governmental, media, and public vigilance. Thus, regulatory frameworks do have an impact on economic crime. With regard to business leaders, it is important that corporate governance develops effective controls which question senior executives' conduct as well as that of people lower down the status scale. Further problems that need to be addressed are related to the vulnerability of civil servants and parliamentarians (at national and intergovernmental levels) to the buying of decisions regarding regulations that affect business interests. Crucial questions in this respect are:

- where are the boundaries between legitimate lobbying and undue influence and corruption?
- how can economic criminals be prevented from capturing democratic institutions and processes?

Many questionable business people – whose fortunes are the result of shady operations (among others related to the privatisation process in eastern Europe) – have moved into the legal commercial sphere. European societies face the dilemma of whether to allow them to legitimise themselves or to try to exclude them. Either way involves risks.

The challenges of globalisation and economic crime cannot be addressed by individual governments or countries alone but must be regulated at European and global levels. The Council of Europe can make an important contribution, as demonstrated with regard to cybercrime, money laundering and corruption. The findings of the Octopus Interface "Conference on Combating Economic Crime" (Portugal, September 2005) provide ample food for thought for further work of the Council of Europe in this field.

1 Organised crime in Europe: the framework

1.1 BACKGROUND AND PURPOSE OF THE REPORT

Organised crime, corruption and other forms of economic and serious crime will remain priority concerns of European societies in the years to come.

The heads of states and governments participating in the 3rd summit of the Council of Europe (Warsaw, 16 - 17 May 2005) therefore expressed their determination "to ensure security for our citizens in the full respect of human rights and fundamental freedoms" and tasked the Council of Europe "to further develop its activities in combating corruption, organised crime – including money laundering and financial crime – trafficking in human beings, cybercrime and the challenges attendant on scientific and technical progress".⁶

Given the changing nature of crime and the emergence of new threats, continuous analyses of the phenomenon are of critical importance. Since 1996 the Council of Europe has been contributing to such analyses through the preparation of annual reports on the organised crime situation.

The purpose of the 2005 organised crime situation report therefore is:

- To point at new and changing threats and the main issues of concern
- To help policy makers in Europe make more informed decisions on anti-crime policies.

As in previous years, a questionnaire was sent to member States in March 2005. The situation report is based to a large extent on the replies to the questionnaire⁷ as well as other literature, including situation reports and threat analyses which are now made available annually by an increasing number of member States.

The 2005 report contains again a chapter dealing in more detail with a topic of particular concern, namely the question of economic crime. As indicated already in the 2004 report, an increasing number of countries report economic crime as organised crime. Correlations between economic and organised crime are rather strong, and both share some characteristics. Given furthermore the serious impact of economic crime on societies, it is appropriate to focus on this topic in this year's report.

The Council of Europe has been dealing with the question of economic crime for some three decades⁸. However, given the evolution of the problem, some of the

⁶ See the "Warsaw Declaration" (www.coe.int).

⁷ Replies were received from: Andorra, Armenia, Austria, Belgium, Croatia, Cyprus, Czech Republic, France, Germany, Hungary, Italy, Lithuania, Luxembourg, Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Serbia (Serbia and Montenegro), Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, and Ukraine. In addition, countries of south-eastern Europe participating in the CARPO regional police project of the Council of Europe and the European Commission (CARDS Programme) completed questionnaires which were made use of for the present report as well (Albania, Bosnia and Herzegovina, Croatia, Serbia and Montenegro and "the former Yugoslav Republic of Macedonia").

⁸ Already in 1973, the 8th Conference of European Ministers of Justice dealt with the question of economic crime in the broader sense. See also Recommendation R(81)12 on Economic Crime

recommendations developed in the 1980s are likely to be out-dated. Moreover, apprehensions of the power of transnational corporations, which motivated much of the work on economic crime in the 1970s, is now replaced by broader concern of the impact of economic and financial globalisation on democracy on societies worldwide. Economic crime within the context of globalisation may have consequences – beyond the economic domain – on democracy, the rule of law, human rights, and economic and social progress in Europe and beyond.

Renewed efforts may thus be required by the Council of Europe in this field to which the present report may add impetus.

This view was also supported by the Ministers and senior officials at the 3rd High-level Meeting of Ministries of the Interior of the Council of Europe held in Warsaw in March 2005. In the resolution which they adopted they:

16. Support the continued preparation of organised crime situation reports by the Council of Europe, and appreciate that it intends to pay particular attention to the issue of economic crime, also in view of the inadequacy of existing European standards with regard to a rapidly changing phenomenon.⁹

In response, from 28 to 30 September 2005 (in Caiscais near Lisbon), the Council of Europe – in cooperation with the Ministry of Justice of Portugal – organised an “Octopus Interface Conference on Combating Economic Crime”. A draft summary of the present report was circulated for discussion on that occasion. That conference identified a range of measures which should be undertaken to prevent and control economic crime in Europe and beyond.¹⁰

1.2 THE CONCEPT OF ORGANISED CRIME

The United Nations Convention on Transnational Organised Crime (UNTOC) can be considered the most important attempt to date to arrive at a globally agreed upon concept of organised crime. It entered into force in September 2003. By December 2005 it had been signed by all 46 and ratified by 31 member States of the Council of Europe as well as the European Community. It is thus also highly relevant for Europe.

The UNTOC applies to serious crime, corruption, money laundering and obstruction of justice provided that the offence is transnational in nature and involves an organised criminal group as defined in the Convention. According to Article 2:

- (a) “Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;
- (b) “Serious crime” shall mean conduct constituting an offence punishable by maximum deprivation of liberty of at least four years or a more serious penalty;
- (c) “Structured group” shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;

adopted by the Committee of Ministers on 25 June 1981, and Recommendations No R (86) 8 on crime policy in Europe in a time of change.

9 Resolution adopted by the Third High-level meeting of Ministries of the Interior on the “fight against terrorism and organised crime to improve security in Europe” (Warsaw, 17-18 March 2005).

10 See appendix.

The Council of Europe - in its Guiding principles on the fight against organised crime - adopted a similar definition of "organised crime group" without limiting the scope to transnational offences.¹¹

The replies to the 2005 questionnaire show that an increasing number of European countries foresee definitions of organised crime or of organised crime groups in their criminal legislation.¹²

Nevertheless - as stated already in previous situation reports - organised crime remains an ambiguous concept¹³:

- It is a concept with a history which keeps changing over time.¹⁴ It is a social construction reflecting forms of crime perceived to be particularly dangerous by society at a given point in time and influenced by different political and institutional interests.
- Organised crime does not take place in a vacuum but in an ever changing environment. It is a dynamic process adapting to new opportunities for crime, to resources and skills available to potential criminals as well as to law enforcement and other control efforts.¹⁵ It may take different forms in different societies.
- The idea of organised crime as a clearly distinct form of crime may be misleading. It may be more appropriate to think of a continuum where some forms of serious crime are more organised than others.¹⁶
- The distinction between organised crime and economic crime seems to pose particular difficulties. Economic crime, like organised crime, has a serious impact on society on the whole. There are strong correlations between economic and organised crime, and both share some characteristics.¹⁷ In fact, as will be

¹¹According to Recommendation Rec(2001)11 of the Committee of Ministers to member states concerning guiding principles on the fight against organised crime (Adopted by the Committee of Ministers on 19 September 2001 at the 765th meeting of the Ministers' Deputies), for the purposes of this recommendation:

- "organised crime group" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes, in order to obtain, directly or indirectly, a financial or material benefit;

- "serious crime", shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;

See also the EU definition of 1998 of a criminal organisation: "1. A criminal organisation means a structured association, established over a period of time, of two or more persons, acting in a concerted manner with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation public authorities (Article 1). (Joint action 98/733/JHA of 21 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union.)

¹² Such as Belgium, Croatia, Cyprus, Lithuania, Moldova, Romania, Serbia (Serbia and Montenegro), Slovakia, Slovenia, Turkey and Ukraine. In Italy, a distinction is made between "criminal associations" and "mafia-type associations".

¹³ See among other things, the contributions compiled by Fijnaut/Paoli (eds) 2004.

¹⁴ See Von Lampe 2001.

¹⁵ See Levi 2002.

¹⁶ See Levi 2002 on the "organisation of serious crime"

¹⁷ See the Explanatory Memorandum to Recommendation Rec (2001)11.

argued in this report, it may be more appropriate to consider organised as a subset of the broader category of economic crime.

- Similarly, rather than thinking in terms of a dichotomy between organised crime on one side and the state and society on the other, organised crime is shaped by the social, economic and political context in which it is operating, with complex – more often symbiotic and clientelistic than confrontational – relationships between organised crime groups, state and society.
- With the paradigm shifting from a focus on hierarchical, “bureaucratic” organised crime groups with well developed structures, to criminal networks – which may take many different shapes, some of which are more permanent or even hierarchical, and others which are loose and fluid – it becomes extremely difficult to identify “structures” and thus organised crime in the conventional sense.¹⁸

The, occasional linkage or even amalgamation of the concepts of organised crime and of terrorism add further ambiguities, sometimes generating a misleading connection between terrorism and particular methods by which it is financed or conducted.

Organised crime and terrorism are – a priori – distinct concepts.¹⁹ Organised crime is primarily aimed at obtaining financial or other material benefits, while terrorism relies on indiscriminate violence to change established legal and constitutional orders and policies. Most criminal groups and networks in Europe are involved in fraud and other forms of economic crime, the production and trafficking in drugs, and the smuggling and trafficking in human beings, but not in activities related to terrorism. However, there are certain similarities and links between organised crime and terrorism, with a tendency of terrorism converging towards organised crime:

- Similarities: both increasingly operate transnationally, use network and cell-based structures, take advantage of diaspora communities, require safe havens and need to conceal financial flows.
- Direct interaction between organised crime and terrorist groups and networks: both sometimes cooperate, such as for the procurement of arms and equipment, or to protect each other's operations (the most often quoted example is the FARC protecting the cocaine business of the Cali and Medellin cartels in Colombia). Organised criminals and terrorists may exchange experience, for example, while in prison. Individual criminals may join terrorist groups or vice versa, or go through a career alternating between terrorism and organised crime (this has for example been reported for the IRA).
- Organised crime using terrorist tactics: organised crime groups rather conceal their activities to pursue criminal profits, while publicity and propaganda is an essential characteristic of terrorism. Nevertheless, organised crime groups may resort to open violence and terror tactics when threatened by public authorities.²⁰
- Terrorists resorting to organised crime: terrorist groups and networks may use organised crime tools and tactics to pursue their objectives and sustain their activities. Terrorism requires continued financing. Kidnapping and hijacking for ransom serve the dual purpose of instilling terror and acquire funding.

18 The structure of organised crime groups and networks will be further discussed in chapter 2.2.

19 See in this context the Resolution adopted by the Third High-level meeting of Ministries of the Interior on the “fight against terrorism and organised crime to improve security in Europe” (Warsaw, 17-18 March 2005).

20 The most notorious case is perhaps the bombing killing judge Giovanni Falcone in 1992 in Italy; the murder of Serbian Prime Minister Zoran Djindjic or the killings of politicians and business men in the Russian Federation by organised crime in the 1990s could also be compared to terror tactics

Protection rackets, extortion of "taxes", fraud, counterfeiting of currencies, smuggling of counterfeited commodities, and – in some cases – trafficking in drugs are resorted to in order to secure financing not only of particular terrorist acts but of terrorist infrastructure. Money laundering is used to conceal the origin, investment and destination of finances intended for terrorist purposes.

- Terrorist groups and networks turning into organised crime: terrorist groups and networks may start with a political agenda but over time political aims may give way to criminal business interest, and they may turn into organised crime.²¹

Reporting on organised crime thus remains difficult. In order to facilitate this task and promote uniform reporting, the Council of Europe – in the questionnaire on the organised crime situation – asked member States to apply the following criteria when defining crime or criminal groups as "organised crime":²²

Mandatory criteria:

1. Collaboration of three or more people
2. For a prolonged or indefinite period of time
3. Suspected or convicted of committing serious criminal offences
4. With the objective of pursuing profit and/or power

Optional criteria:

5. Having a specific task or role for each participant
6. Using some form of internal discipline and control
7. Using violence or other means suitable for intimidation
8. Exerting influence on politics, the media, public administration, law enforcement, the administration of justice or the economy by corruption or any other means
9. Using commercial or business-like structures
10. Engaged in money laundering
11. Operating on an international level.

In addition to the minimum characteristics (the "mandatory criteria" 1 to 4), at least two of the "optional criteria" need to be applicable to qualify a criminal group or crime as organised crime.

Through this approach, "organised crime" may not only include traditional criminal groups but also legal entities or professionals engaged in serious forms of organisational or economic crime.

Any analysis of the organised crime situation will need to:

- take into account the specific context and changes in the environment ("environmental scan")
- focus on the main crime markets.

This needs to be complemented by an assessment of:

- the characteristics of organised crime groups and networks, and in particular of their structure

21 This is true for the Triads in China, the KMT in Burma but also for the Cosa Nostra in Sicily.

22Also used by the European Union (doc 6204/2/97 Enfopol 35 Rev 2) for its annual organised crime reports.

- the modi operandi of such groups, including the relationship between illegal and legal structures of society.

1.3 ENVIRONMENTAL SCAN

The “environmental scan” was introduced in the 2001 report on the organised crime situation. It consists of the gathering and processing of information about the external environment of organised crime in order to identify major trends affecting it and allowing analyses to define potential changes resulting from these trends. This process contributes to a proactive focus and makes the relationship between the trends identified and the entity more transparent.

PEST analyses help structure the external environment by dividing it into political, economic, social and technological domains.²³

POLITICS AND GOVERNANCE

Security continues to be perceived to be a primary concern in many societies around the world, in particular following the terrorist attacks in Spain, the Russian Federation and Turkey in 2004, and in the United Kingdom and Egypt in 2005. Global surveys suggest that – when compared to other regions of the world – Europeans are particularly anxious about their safety,²⁴ although perceptions of safety may not necessarily be related to actual crime rates. In fact, even in countries where crime rates decrease, people may feel less secure.²⁵ Terrorism and the general feeling of insecurity will continue to influence crime policies and generate controversies over the balance between security and fundamental rights and freedoms.

A crucial development in 2004 was the enlargement of the European Union by ten new member states on 1 May. There have been concerns that open borders would lead to more crime within the “old” European Union. Others argued that security within Europe will be enhanced through better cooperation against and the adoption of the *acquis* by the new members. For example, replies to the questionnaire received in 2005 from the Netherlands note that in 2004 “it was striking that the number of suspects from the new Eastern European member states decreased dramatically for all criminal activities”. It is unlikely, however, that enlargement will have an immediate effect on the organised crime situation. Most of the provisions of the Schengen agreement are not yet in force in new member States of the EU, which means that border controls will remain in place for individuals for some time; the same is true for restrictions to labour migration. Although motivated by a variety of reasons – and with security and crime concerns only playing a minor role –, the results of the referenda in France and the Netherlands in May and June 2005, rejecting the proposed Constitution for the European Union also raise questions as to further enlargement.²⁶ In any case, information available so far supports the thesis that borders are more beneficial to criminals than to criminal justice and the control of crime.

23 PEST stands for political, economic, social and technological domains. See Black et al. 2001. Such PEST analyses may appear speculative, but also provide useful insights.

24 According to the Voice of the People Survey carried out by Gallup International and released in January 2004, 64% of Western Europeans believe that the next generation will live in a less safe world (against 48% of those interviewed in all countries).

25 See United Nations 2005.

26 For the motivations see the Eurobarometer post-referendum surveys (Flash Eurobarometers 171 and 172). According to first results of the Eurobarometer 63 (July 2005) support to further enlargement of the EU in future years amounted to 50% (3% less than in 2004) while 38% of EU citizens interviewed opposed further enlargement.

Corruption remains a key issue in Europe and an important factor facilitating organised crime as well as economic crime. Increasing reports in 2005 on corruption within the private sector can be observed. Increasing attention is also paid to the question of "political finances" - including the financing of political parties and electoral campaigns - and the question of political corruption in general.²⁷ This issue and the impact of corruption on the future of democracy in Europe is likely to move higher on the European agenda.²⁸ In global comparison, corruption appears to be less widespread in Europe than other parts of the world. The twenty least corrupt countries on Transparency International's Corruption Perception Index comprise eleven member States of the Council of Europe. On the other hand, several European countries figure in the bottom part of the table, and several European countries are considered major bribe payers.²⁹ It is furthermore noteworthy that in global perspective the number of police-recorded incidents involving corruption are highest in Europe and that Europe shows the second highest results (after Africa) in crime victims surveys related to corruption.³⁰

Research³¹ shows significant statistical correlations between governance indicators and indicators of human development for European countries. This means that human development (income, education, health) goes hand in hand with accountability, political stability, effectiveness of public administration, rule of law and control of corruption. And, the better the performance in terms of governance, the less a country is affected by organised crime.³²

In general terms, the changing role of the state in the context of globalisation with a stronger role of transnational corporations and the delegation of powers to supranational and international organisations but also to local and regional authorities raises questions as to the capacity of national public authorities to control crime.

At the same time, the international framework for the control of organised and other forms of serious crime is being further reinforced. In May 2005, for example, three new treaties were opened for signature by the Council of Europe:

- The Convention on the Prevention of Terrorism (CETS 196)
- The Convention on Action against Trafficking in Human Beings (CETS 197)
- The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198).

While an increasing number of tools is thus available, they are not always fully made use of. Some instruments are in force but still require broad ratification, including the Council of Europe's Convention on Cybercrime (in force since 1 July 2004) and the Council of Europe's 2nd additional Protocol to the Convention on Mutual Legal

27 In 2004/5, member States sought increasingly assistance from the Council of Europe in view of improving transparency and accountability in the funding of political parties and electoral campaigns. In June 2005, the Group of States against Corruption (GRECO) decided to include this topic in its next round of GRECO evaluations. See also Transparency International (2004a): Global Corruption Report 2004 – Focus on Political Corruption.

28 In this context see Council of Europe 2004: The Future of Democracy (Integrated project "Making democratic institutions work"). Strasbourg.

29 For the CPI and the Bribe Payer Index see www.transparency.org

30 United Nations 2005.

31 See Kaumann et al (2003).

32 Van Dijk (2003), and Van der Heijden/Landman (2004).

Assistance in Criminal Matters. These instruments provide a range of new tools against transnational organised crime.

ECONOMY

Globalisation – in particular economic globalisation – has a major impact on economies worldwide who compete for the “ease of doing business”. A survey on world competitiveness in 2005 covering 60 countries, lists five European countries among the ten most competitive countries, but also six among the ten least competitive ones.³³ Constraints to governance, and in particular corruption, are considered key determinants shaping a country’s global competitiveness.³⁴

Research suggests that legal and illegal markets operate on similar principles, in that legal and illegal economic activities are both subjected to the dynamics of supply and demand and display similar businesslike behaviour when considering lucrative opportunities.

The process of economic globalisation thus alters the conditions not only for legal but also for illegal activities:

- Asymmetries. Globalisation may further multiply asymmetries which are believed to be criminogenic. According to the human development index of the United Nations Development Programme, Europe accounts for 15 of the world’s 20 most developed nations. However, there are a number of Council of Europe member States with only a medium level of human development. At the same time: while asymmetries within Europe are substantial, they are even larger between Europe and other parts of the world, some in the immediate neighbourhood.
- Transnational organised crime. When the term organised crime appeared in Chicago in the 1930s it was about criminals pursuing crime as a business in a given city or territory which they sought to keep under their control, often in relation to the supply of a prohibited drug, in this instance alcohol. In present times, as legitimate business globalises, so does crime. Now, transnational organised crime is able to exploit business opportunities worldwide to increase profits and – caused by weak controls – at reduced risk. Managers of organised crime groups and networks are separated from the location of crime, and thus virtually invisible.
- “Traditional” crime markets. As globalisation facilitates the expansion of international trade in almost any sector, so does it facilitate transnational operations of criminal organisations on classical crime markets, such as trafficking in drugs, arms, vehicles, cigarettes and others. Considering asymmetries in human development and push and pull factors for migration, it may seem logical that human beings are a particularly valuable commodity to be smuggled, trafficked and exploited.

³³ IMD 2005: World Competitiveness Yearbook 2005. (www.imd.ch/wcc)

³⁴ Daniel Kaufmann 2004: Corruption, Governance and Security: Challenges for the Rich Countries and the World (Chapter in the World Competitiveness Yearbook 2005).

Table 1: Asymmetries in human development in Europe³⁵

Country	Populat-ion (millions) 2003	Gross nat. income/ capita (US\$) 2003	Human devel. rank 2003	Corruption Perception Index rank 2005	Record. criminal offences 2000	Convic-tions 2000	Prison popula-tion 2004
Per 100 000 inhabitants in 2000							
Albania	****3.4	1 740	72	126	149	117	105
Andorra	0.07						90
Armenia	3.2	3 770	83	88	360	203	92
Austria	8.1	26 720	17	10	6 891	512	100
Azerbaijan	8.2	810	101	137	*73	*197	198
Belgium	10.4	25 820	9	19	**8 558	1 446	88
Bosnia and Herzegovina	****3.8	1 540	68	88			67
Bulgaria	7.8	2 130	56	55	1 779	388	127
Croatia	4.4	5 350	45	70	1 597	403	68
Cyprus	0.8		29	37	575	**126	50
Czech Republic	10.2	6 740	31	47	3 811	615	182
Denmark	5.4	33 750	14	4	9 447	**767	70
Estonia	1.4	4 960	38	27	4 038	717	330
Finland	5.2	27 020	13	2	10 262	3 351	69
France	59.6	24 770	16	18	6 405	957	91
Georgia	4.3	830	100	130	269	173	165
Germany	82.5	25 250	20	16	7 616	1 071	96
Greece	10.6	13 720	24	47	3 482		83
Hungary	10.1	6 330	35	40	4 445	1 034	165
Iceland	0.29		2	1		*719	40
Ireland	4.0	26 960	8	19	1 928	193	85
Italy	****56.3	21 560	18	40	**4 123	**484	100
Latvia	2.3	4 070	48	51	2 087	528	339
Liechtenstein	0.03						53
Lithuania	3.5	4 490	39	44	2 275	571	234
Luxembourg	0.4		4	13	5 216		111
Malta	0.4		32	25	4 345		72
Moldova	3.6	590	115	88	864	360	297
Monaco	0.03						39
Netherlands	16.2	26 310	12	11	8 215	658	123
Norway	4.5	43 350	1	8	3 278	1 427	65
Poland	38.2	5 270	36	70	3 278	577	209
Portugal	10.4	12 130	27	26	3 616	534	128
Romania	21.8	2 310	64	85	1 578	338	180
Russian Federation	143.1	2 610	62	126	2 022	811	532
San Marino	0.03						0
Serbia and Montenegro	****10.7	1 910		97			92/ 108
Slovakia	5.4	4 920	42	47	1 642	399	164
Slovenia	2.0	11 830	26	31	3 614	358	59
Spain	40.7	16 990	21	23	2 308	*254	139
Sweden	8.9	28 840	6	6	13 693	1 338	75
Switzerland	7.3	39 880	7	7	3 732	**971	72
"The former Yugoslav Republic of Macedonia"	****2.0	1 980	59	103	*976	*366	78
Turkey	69.6	2 790	94	65	712	*1 512	95
Ukraine	48.0	970	78	107	1 126	470	415
United Kingdom	59.3	28 350	15	11	***9 817	***2 684	***140

35 Sources: UNDP 2005 for human development ranking (based on education, life expectancy and gross domestic product in purchasing power parities per capita); World Bank 2005 for gross national income per capita; Transparency International Corruption Perception Index 2005 for corruption; International Centre for Prision studies for prison population 2004 (http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/europe_records.php?code=165)

WODC 2003 with data on crime for 2000 unless indicated otherwise:

*UNODC 2002 **in 1999 ***data for England and Wales only;

Council of Europe 2003 with population data for 2003 unless indicated otherwise:

****in 2002 *****in 2000.

- “Organised economic crime”. While traditional crime markets remain important, globalisation offers new opportunities in terms of fraud, financial crime and other forms of economic crime which are believed to be many times more profitable and at the same time less risky. For many eastern European countries tax fraud, capital flight and crimes committed in the process of privatisation appear to be of greater relevance than traditional organised crime. The distinction between on the one hand legal enterprises employing illegal means for business, committing economic crimes or making use of crime proceeds, and on the other hand organised crime groups created for the purpose of committing crimes but managed like business enterprises and investing proceeds in the legal economy may becomes less clear. Considering the increasing power of transnational corporations in the context of economic globalisation, “organised economic crime” raises additional questions with regard to governance.

SOCIO-CULTURAL TENDENCIES

It is often argued that organised crime is facilitated by particular cultural factors and the existence of subcultures with little attachment to mainstream social groups. Organised crime can have a cultural basis in that criminal networks function as an alternative social system or that bonding mechanisms are based on trust, ethnicity or family ties. Ethnic networks are believed to play a significant role in the development of transnational organised crime, especially where immigrant groups have not been fully integrated in their new society. Terrorism, events in Iraq and continued violence in the near East may further contribute to asymmetries based on cultural, religion and ethnic identity. On the other hand, however, reports by member States suggest that the explanatory value of ethnicity loses its significance over time with more and more organised crime groups and networks showing a multi-ethnic composition. With regard to economic crime, it would appear that organised criminals are predominantly nationals of the country in which the crime is committed (although they may target victims in other countries, thus making the crime a transnational one). Ethnic relationships may not necessarily fulfil the requirements of an environment calling for flexible, adaptable and international networks

TECHNOLOGY AND SCIENCE

Societies all over the world rely on information and communication technologies (ICT). The number of Internet users worldwide increased almost three time from 300 million in 1999 to some 890 million in 2005, including some 260 million in Europe³⁶, and e-commerce is “coming of age” in Europe³⁷. Societies are thus highly depend on ICT and vulnerable to attacks.

The development of ICT and the expansion of the internet not only change the ways societies communicate but also how societies organise themselves. This creates opportunities for organised crime in that it provides criminals with new tools to commit old types of crime as well as with tools and markets for new types of crime.³⁸ ICT may also have an impact on the structure of criminal organisations and the management of criminal enterprises. It has been argued that societies and economies built around ICT follow a networking logic rather than one of clear hierarchies.³⁹ If – as

36 <http://www.internetworldstats.com/stats.htm>. See also National High-tech Crime Unit (United Kingdom) 2005: High-tech Crime – the impact on UK business 2005. London.

37 See the European E-business report 2004 (<http://www.ebusiness-watch.org/resources/documents/eBusiness-Report-2004.pdf>)

38 See Europol 2002.

39 See Castells 2003, p. 21 on the “rise of the network society”.

has been stated earlier – organised crime groups are shaped by their environment, one may assume that this logic will increasingly apply to organised crime as network-based organisations.

The 2004 Organised Crime Situation Report focused on the challenge of cybercrime and proposed a number of hypotheses on the links between cybercrime and organised crime. It would seem that the hypotheses formulated in the 2004 report are being confirmed. While prior to 2004 organised cybercrime was rather rare and a potential risk, the exploitation by organised criminals of the economic opportunities offered by the Internet and of the dependency of societies on ICT has become a reality.

2 The organised crime situation

Knowledge of organised crime depends on controls. Only those criminal activities which are investigated or analysed from an organised crime angle become visible as such. The understanding of the phenomenon thus depends to a large extent on law enforcement priorities and on what a society considers to be particular threats at a given moment in time. Nevertheless there are certain phenomena which persist over time.

A report on the Sicilian mafia in the aftermath of World War II noted that with the advent of a new generation of young “honourable men” – many of whom had returned from the USA – the Cosa Nostra negated possible previous moral inhibitions in the early 1950s and developed its business around three profitable markets, namely public construction, drugs and prostitution.⁴⁰

The Council of Europe currently comprises 46 member States, and organised crime thus takes a diversity of forms and involves a large variety of criminal activities. However, it seems that the activities on which the Cosa Nostra focused fifty years ago were precursors of what constitute the markets of organised crime which are common to most European countries today:

- Fraud and other forms of economic crime
- Drug production and trafficking
- People as commodity in the form of smuggling of persons and trafficking in human beings.

While drug trafficking has been a synonym for organised crime in many countries for some time, the general perception of smuggling of persons and trafficking in human beings as key problems of organised crime is a relatively recent development. The same is true for reporting by many countries across Europe on fraud and other forms of economic crime as one of the main activities of organised crime.

Last year's situation report focused on the challenge of cybercrime and the vulnerabilities of societies around the world to this threat. Recent information appears to confirm some of the hypotheses on increasing links between organised crime and cybercrime stated in 2004.

Money laundering remains a key issue in Europe and gains in importance as organised crime groups and networks make more and more use of legal commercial structures and as the boundaries between legal and illegal structures – between the upper- and the underworld – become increasingly blurred.

While organised crime groups and networks become more sophisticated and make use of new business opportunities, traditional predatory types of crime still persist, and may represent key markets of organised crime in some European countries. They include criminal activities such as extortion and racketeering, smuggling of contraband and arms, or various forms of property crime.⁴¹

40 Lewis 2003.

41 Any reporting on organised crime activities may appear somewhat arbitrary. Knowledge of organised crime depends on controls, and only those criminal activities which are investigated or analysed from an organised crime angle become visible as such. The understanding of the phenomenon thus depends to a large extent on law enforcement priorities and on what a society considers to be particular threats at a given moment in time.

In any case, an increasing number of reports suggest that organised crime groups and networks do not focus on one particular type of crime but diversify their criminal ventures.

The sub-chapter on organised crime groups and networks reveals certain difficulties in the identification of organised crime groups. As “organising for crime” may take many different forms, network analyses and – with proceeds as the common denominator of organised crime – analyses of money flows may help overcome conceptual problems, provided that they are collected systematically.

Modi operandi continue to include the use of violence and intimidation. However, the use of influence, including corruption, and the use of legal professionals and commercial structures point at the importance of symbiotic relationships between organised crime and parts of the state and society.

Most organised criminals are nationals of the country in which the crime is detected. At the same time, many of them are connected to networks in other countries, confirming that even though its effects may be experienced primarily at the local level, organised crime is increasingly transnational in nature.

2.1 CRIMINAL ACTIVITIES

2.1.1 Trafficking in drugs

The international drug control system is based on three United Nations conventions⁴² which restrict the use of several hundred psychoactive substances to medical and scientific use. Abuse of these substances – primarily of opiates (including heroin), cannabis, cocaine and crack cocaine, and amphetamine-type stimulants (ATS, including ecstasy, amphetamines and other synthetic stimulants) – is a major global issue. It is believed that currently 200 million people worldwide (or 5% of the global population) use drugs, of which 80% cannabis, 17% ATS, 7% cocaine, 5% heroin and 3% other opiates.⁴³ Most drug users live in developing countries.

Almost all of the heroin consumed in Europe is based on opium from Afghanistan, where 87% of the world's opium was produced in 2004. The “Balkan Route” continues to be the main channel for trafficking of heroin to Europe. However, as the Russian Federation and other countries in eastern Europe become major markets themselves, the “Silk Route” from Afghanistan via central Asia becomes more significant. Ethnic Albanian criminal groups are reportedly responsible for a large part of the wholesale distribution of heroin in Europe.

Cocaine is produced from coca leaves primarily cultivated in Bolivia (15% of the world's cocaine in 2004), Colombia (50%) and Peru (32%) and primarily destined for the United States and other American countries. A significant share is trafficked to Europe as reflected in European seizures which in 2003 accounted for 17% of global seizures. Spain and the Netherlands are considered the most important entry points for cocaine.

42 The Single Convention on Narcotic Drugs (1961), the Convention on Psychotropic Substances (1971) and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

43 Obviously this includes poly-drug use. Data according to UNODC 2005. While 5% use substances under international control, 30% of the world's population uses tobacco.

Cannabis production is spread over more than 140 countries around the world. Although Morocco is the main supplier for European markets (80% of the resin consumed in Europe), domestic production is believed to satisfy a considerable share of demand. Albania and the Netherlands appear to be the main producers within Europe.

In terms of ATS, China, Myanmar and the Philippines are the main source countries; while European production of methamphetamines appears to be concentrated in the Czech Republic. However, the main countries of origin of amphetamines globally are European, in particular the Netherlands, Poland, Belgium and Lithuania, while the Netherlands is the primary source of ecstasy globally.

Recent reports and data suggest the following trends and issues:⁴⁴

- As stated in last year's report: considering purchasing power and numbers of drug users – not only in western but now also in central and eastern Europe – Europe is probably the most profitable market globally:
 - With a rate of 0.5 %⁴⁵, Europe is the region with highest prevalence of heroin users, globally. Prevalence is very high in eastern Europe (0.8%), and in particular in the Russian Federation and Latvia.
 - With regard to cocaine, Spain (2.7%) and the United Kingdom (2.1%) appear to have the highest prevalence rates worldwide after the United States of America (3%).
 - In terms of cannabis use, with 5.6% prevalence rates are lower than in other parts of the world, but nevertheless high in some European countries, in particular Spain (11.3%), the Czech Republic (10.9%) and the United Kingdom (10.9%).
 - Amphetamine use is high in Europe (0.5%) – in particular in the United Kingdom (1.6%), Estonia (1.4%) and Denmark (1.3%) – a the use of ecstasy is above average (0.6%) with the Czech Republic (2.5%) and the United Kingdom (2.0%) showing the highest rates globally, with the exception of Australia (4.2%) and New Zealand (2.2%).
 - Within the European Union (25), between 1.2 and 2.1 million people in the age group 15-64 are defined as "problem drug users".⁴⁶ Between 0.85 and 1.3 million of them are injecting drug users. While the number drug-related deaths is declining in the European Union, in some new EU as well as other European countries – including Estonia, Latvia, the Russian Federation and Ukraine – the link between injecting drug use and HIV/AIDS is particularly worrying.
- Drug trafficking is considered one of the most important activities of organised crime groups and networks in Europe, and the primary problem – at least in terms of numbers of cases recorded – in Armenia, Croatia, Czech Republic, Germany, Monaco, the Netherlands, Norway, Poland, Spain and the United Kingdom:⁴⁷
 - In Germany, 32% of the organised crime groups and networks investigated in 2004 were trafficking in drugs, primarily in heroin and

44 Sources: UNODC 2005 (including volume 2 – statistical annex) and EMCDDA 2004.

45 Annual prevalence (2002-2004). Users in% of population age 15-64. Source: UNODC 2005.

46 See EMCDDA 2004. "Problem drug use" is defined as "injecting drug use or long duration/regular use of opiates, cocaine and/or amphetamines".

47 Sources: Replies to questionnaire, including CARPO questionnaire. NCIS 2005 for UK.

- cocaine. Cocaine trafficking is carried out by Germans and increasingly also by Nigerian and Italian groups. Most cocaine is trafficked from the Netherlands. Turkish groups dominate the trafficking in heroin. Trafficking in ATS decreased compared to previous years.
- In the Netherlands, 200 out of 289 investigations into organised crime analysed in 2004 involved drug trafficking, in most cases as the principal activity of the organised crime group or network. 57% of the investigations into hard drugs concerned cocaine, 39% ATS and 18% heroin. 45% of the suspects were of Dutch origin and another 11% from Turkey.
 - In Spain, 253 groups (from a total of 494 organised crime groups and networks) with 5941 suspects were investigated in 2004 in relation to drug trafficking. With regard to the trafficking in cocaine, a trend already detected in 2003 was confirmed, namely that the "African route" and its infrastructure is the same for cocaine trafficking and the smuggling of persons. After Spaniards and Colombians, Moroccans are now the third largest group among drug traffickers.
 - In the United Kingdom, drugs-related organised crime is considered one of the principal threats as the UK represents a sizeable drug market.⁴⁸ Most of the heroin reaches the UK through Turkish criminal organisations operating in the Netherlands and the UK. Cocaine is trafficked to the UK from Spain and the Netherlands, and ATS primarily from Belgium and the Netherlands. Within the UK, a range of groups (British, Turkish, African, Asian, South-east European) are involved in distribution of drugs within the United Kingdom.
 - In Albania, some 20 organised crime groups and networks with 3 to 20 members each are believed to be operating in the field of drug trafficking and to be closely cooperating with groups from Turkey, "the former Yugoslav Republic of Macedonia", Kosovo, Montenegro, Italy and Greece. 395 persons were prosecuted in 2004 on drug-related charges, most of them for trafficking in heroin and marijuana. Heroin is transported to Albania from Turkey mostly by trucks and from Albania to Italy and Greece.
 - In Serbia - like Albania located on the so-called "Balkan route" - drug trafficking is considered one of the most dangerous form of organised crime. 19 groups (from a total of 47 groups) with 75 suspects investigated in 2003 were involved in drug trafficking. Heroin is trafficked primarily from Kosovo to Serbia for local markets and for transit to western Europe, while ATS are smuggled in the opposite direction coming from the Netherlands via Hungary and Croatia to Serbia from where they are trafficked to Bulgaria and Turkey, sometimes in exchange for heroin.
- Seizure figures⁴⁹ confirm assumptions on drug markets, major trafficking routes and the role of organised crime groups and networks:
 - Europe, in 2003, accounted for 34% (or 18,019 kg) of global seizures of heroin, with Turkey (4,705 kg), the Russian Federation (3,249 kg), the United Kingdom (2,730 kg), and Italy (2,583 kg) seizing the largest amounts. Countries in south-eastern Europe (Albania, Bulgaria, Croatia,

48 The size of drug markets is difficult to determine. The NCIS report refers to data suggesting a heroin market of 25 – 35 metric tonnes, cocaine 35 – 45 mt, and the consumption of 26 – 100 million ecstasy tablets (NCIS 2005).

49 Based on UNODC 2005 for the year 2003.

- Romania, Serbia and Montenegro and “the former Yugoslav Republic of Macedonia”.
- With regard to cocaine, 17% (or 84517 kg) of the world’s seizures take place in Europe, with more than half (58%) seized in Spain and a further 21% in the Netherlands.
 - In Europe, 27% of all ATS (excluding ecstasy) seizures were made, primarily in the United Kingdom Netherlands, Bulgaria, Turkey and Germany. For ecstasy, Europe accounted for 87% of global seizures, in particular by the United Kingdom and the Netherlands, followed by France.
 - Afghanistan remains the largest producer of opium (4,100 mt or 87% of global production in 2005).⁵⁰ While in the recent past, opium poppy cultivation was concentrated in a few provinces, it has now spread to most, if not all provinces of the country. Obviously, post-Taliban drug control efforts by the international community have failed. This has considerable impact on Europe, not only in terms of availability of heroin but also in terms of security and stability as well as the credibility of the international community with regard to the reconstruction of Afghanistan. The continuous high level of production in Afghanistan outweighs by far reductions in poppy cultivation in Laos and Myanmar.

2.1.2 Trafficking in human beings

Trafficking in human beings as an issue of human rights and of organised crime has moved higher on the agenda of governments in many countries of Europe – reflected among other things in the ratification of the “trafficking protocol” to the Palermo Convention⁵¹ by 29 European countries as at 1 August 2005.

In May 2005 – at the 3rd Summit of Heads of State and Government – the Council of Europe Convention on Action against Trafficking in Human Beings (CETS 197) was opened for signature. Article 4 of this treaty defines “trafficking in human beings” as follows:⁵²

a "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

50 UNODC 2005a: Afghanistan Opium Survey 2005. This amount is similar to 2004 (4,200 mt). Production in 2004 had increased by 17% when compared to 2003 (3600 metric tonnes).

51 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted by resolution A/RES/55/25 of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations.

52 Article 4 (a) is thus identical with Article 3 (a) of the “Palermo” Protocol. However, the Council of Europe Convention does not limit trafficking in human beings to organised crime and transnational trafficking. By December 2005, CETS 197 had been signed by 23 member States of the Council of Europe.

- b The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- c The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- d "Child" shall mean any person under eighteen years of age;
- e "Victim" shall mean any natural person who is subject to trafficking in human beings as defined in this article.

In contrast to the concept of smuggling of migrants with its focus on illegal border crossings, trafficking in human beings is about the violation of the rights of the individual through exploitation. Thus, it is less an issue of migration policies than of the protection of victims and their human rights, and of the punishment of the traffickers and their associates.

The concept of trafficking in human beings implies a strong role of criminal organisations. It includes the threat or use of force, coercion, fraud, deception or other means; it includes several distinct but interrelated acts, and the exploitation is not a one-time event but is carried out over a certain period of time. Organised crime groups and networks exploit market opportunities for sexual services and cheap labour on the one hand and the vulnerable situation of women and children in many countries on the other. Furthermore, they can count on high profits and a relatively low risk of control and sanctions.

Trafficking in human beings is not necessarily transnational, but may also take place in-country, often from poor or rural to urban areas.

Although there are many forms of exploitation – according to reports received – in Europe, most victims of trafficking are women and girls who are exploited for sexual purposes. As Europeans spend billions of Euro per year for prostitution and other commercial sexual services, trafficking in human beings is a highly profitable business. The market for commercial sexual services is considered a major force driving trafficking. In a number of countries, prostitution or the "red light milieu" serve as an entry point for organised crime groups and networks in a given area. It is therefore no coincidence that the large majority of victims are found in the prostitution sector, and the share of migrant sex workers appears to be ever increasing.

Typically:

- Women respond to job advertisements for babysitters, models, hairdressers, dancers, waitresses, or are encouraged or recruited by friends or relatives.⁵³
- Transport and papers are arranged by organised crime groups and networks.
- Identity documents are taken away on arrival and women are confronted with a large debt owed to traffickers which is to be repaid through prostitution.
- Violence may be used to coerce women into prostitution. There are numerous reports of women kept in isolation or beaten or raped in order to "break" them.
- Victims are resold or exchanged between criminal groups and countries in order to ensure the availability of "fresh meat" on the market.

53 According to research in Serbia, 64% of recruiters are acquaintances (Nikolic-Ristanovic 2004).

Reports on the trafficking situation in 2004/5 suggest the following:

- In many parts of Europe, trafficking in human beings continues to increase. For example:
 - In the Netherlands, 18 from 289 organised crime cases analysed in 2004 were related to trafficking in human beings. In 2004, the number of victims registered increased from 257 (in 2003) to 405 (in 2004). Bulgaria, Romania, Nigeria and the Russian Federation are the most common countries of origin. From 102 suspected traffickers, 30% were Dutch and 22% Turkish nationals. It is believed that trafficking in human beings, in particular from Bulgaria and Romania, will be a continuous threat in the coming years.
 - In Sweden, the number of trafficking cases is growing. Previously a phenomenon in larger cities, it is now spreading to smaller towns all over Sweden. Fictitious marriages of foreign criminals with Swedish women are used to settle down and create a platform for the trafficking business in Sweden. Trafficking operations in Stockholm are run mostly by criminals from the former Soviet Union.
 - In Germany, the number of victims increased from 811 (in 2002) to 1,235 (in 2003). 80% of the victims were from central and eastern Europe (including 26% from Russia, 12% from Romania and 10% from Bulgaria). 45% of the victims had been deceived about the purpose of their migration, while 32% had agreed to work in prostitution. Violence was used against 53% of victims. From 1110 suspected traffickers, 39% were Germans and 31% from central and eastern Europe. 21% of suspects were female, often former prostitutes themselves. They now recruit victims in their home countries and broker them to brothels or supervise them in brothels.
- In south-eastern Europe in general, trafficking in human beings appears to be declining – or at least has become less visible. According to a recent report⁵⁴:
 - Fewer victims return from the countries of the region to their country of origin
 - Fewer victims seek assistance
 - More victims return from European Union countries to their home countries
 - Fewer “irregular migrants” are registered in the transit countries of the region
 - There are fewer reports on trafficking in human beings in this region.

This is confirmed by information provided by countries of south-eastern Europe:

- In Albania in 2004, 257 criminal proceedings against 262 defendants related to trafficking in human beings were underway. 121 traffickers were convicted. Increasing trust and cooperation by victims permit to bring to court crimes committed in the previous year. Overall, trafficking in human beings seems to be decreasing.⁵⁵
- In Bosnia and Herzegovina it would seem that while in the past the country was primarily one of transit and destination, it now also is a country of origin. Exploitation, in particular through prostitution, is shifting from night bars to hotels and private houses. In 2004, 11 cases of

54 UNICEF/UNOHCHR/OSCE-ODIHR (2005): Trafficking in Human Beings in South Eastern Europe 2004 – Focus on Prevention.

55 Report of the Albanian Prosecutor General to Parliament (January 2005).

- trafficking were investigated in Bosnia and Herzegovina compared to 14 cases in 2003.
- In Serbia (Serbia and Montenegro), trafficking means trafficking in women and children for sexual exploitation, children for begging and children and men for labour exploitation. About 10 criminal groups with 100 members are involved in trafficking and closely cooperate with criminals from other countries. While the number of foreign victims exploited in Serbia or in transit has significantly decreased, Serbian women are increasingly trafficked to other countries.
 - In Kosovo (Serbia and Montenegro), 103 cases of trafficking in human beings - 82 of which related to organised crime - were recorded and 86 suspected traffickers arrested in 2003/4. Almost half of the victims (48%) were from Moldova, 21% from Romania and 14% from Ukraine, while 7% were from Kosovo itself.⁵⁶ Apparently, open use of violence against victims is decreasing to avoid unwanted attention, which does not mean that intimidation or threats towards victims or their families are ceasing. Corruption is widely used by criminals to facilitate border crossings.
 - In Slovenia in 2004, the police dealt with 14 cases of trafficking involving 19 victims. In addition, six Slovenian women were "abused through prostitution" which was not qualified as a trafficking offence. A decrease in the number of trafficking offences has been noted which may be due to better legislation and enforcement or more concealed forms of trafficking.⁵⁷
- The number of investigations, prosecutions and convictions for trafficking in human beings is growing.⁵⁸ For example:
- Belgian courts convicted 170 traffickers in 2003 compared to 130 in 2002.
 - In Bulgaria, there were some 900 sentences on trafficking-related offences.
 - In the Czech Republic, 12 traffickers were convicted as compared to 5 in 2003.
 - In France, 940 were arrested for pimping in 2004.
 - In Hungary, 38 traffickers were convicted in 2004.
 - In Moldova, 22 suspects were convicted for trafficking (including 6 for trafficking in children) in 2004 as compared to 6 in 2003.
 - In Poland, 147 traffickers were convicted for forced prostitution and additional 5 for human slavery in 2003.
 - In Romania, 103 traffickers were convicted in 2004 compared to 49 in 2003.
 - In Ukraine, 67 traffickers were convicted while 17 organised crime groups involved in trafficking were dismantled in 2004.
- Children account for a considerable share of the victims. In some countries of South-eastern Europe, 50% of victims or more are reportedly below the age of 18, that is, they are children.⁵⁹ Greece is the primary destination of children trafficked from Albania. The regions of the Czech Republic bordering Germany and Austria are an area of destination for children trafficked by organised crime networks from other eastern European countries and serving as prostitutes for

⁵⁶ Replies to the CARPO questionnaire on the organised crime situation. CARPO is a project of the Council of Europe and the European Commission.

⁵⁷ Slovenia/Interdepartmental Working on Combating Trafficking in Human Beings (2005): Report on Combating Trafficking in Persons. Ljubljana.

⁵⁸ Data based on US Department of State 2005.

⁵⁹ Save the Children (2004).

clients from Austria, Germany and other western countries.⁶⁰ In the Baltic Sea region, Estonia, Lithuania and Russia are reportedly countries of origin; but children are also trafficked internally within Lithuania and Russia. Germany, Sweden and the United Arab Emirates have been reported as countries of destination. Most victims appear to be girls aged 13 to 17 who are trafficked for the purpose of prostitution.⁶¹ In Germany in 2003, 4.8% of victims of trafficking in human beings were aged 14-17.⁶² In the United Kingdom, sex offences against children, including on-line child abuse is considered one of the main threats of organised crime. It is assumed that most child sex offenders act alone, but that there is "extensive criminal networking" to exchange images or gain access to victims. Such networks are hierarchical and secretive and shield their activities. Many children enter the United Kingdom as unaccompanied minors and asylum seekers, or through foster arrangements or contracts as domestic staff. Some of these are then exploited through prostitution.⁶³

- Virtual sex is an expanding market. Global revenue of the pornographic industry has been estimated at US\$ 57 billion⁶⁴, with adult videos (US\$ 20 billion) accounting for the largest share, and the internet generating some US\$ 2.5 billion. Search engines are used for an estimated 68 million requests for pornography daily. Information and communication technologies facilitate the sexual exploitation of women and children. Reports suggest that in Europe, it is mainly trafficked women from central and eastern Europe who are exploited for the production of pornography.⁶⁵ Child pornography on the internet is of particular concern, with more than 100,000 search engine requests daily. Child pornography seems to have become an important activity of organised criminals, with criminal networks sharing child pornography online and operating fee-based sites which reportedly now account for more than 50% of paedophile websites.⁶⁶
- Trafficking – and the same applies to illegal migration – generates large amounts of proceeds which need to be laundered. Research⁶⁷ suggests that not necessarily new techniques are used when laundering the proceeds of trafficking, there are certain typologies which are used more frequently than others. These include in particular money remittance services, but also cash couriers, purchase in real estate and cars or other tangible objects, and investment in the legal cash business activities (bars, restaurants etc.). Investigations into money laundering in relation to trafficking are less often triggered by suspicious transaction reports but rather by financial investigations in conjunction with criminal investigations into trafficking.

60 See Bell/Pickar (2003).

61 Baltic Sea Region Task Force on Organized Crime: Outcome of the OPC Questionnaire on Trafficking in Children 2004 (2 December 2004).

62 BKA 2003d.

63 NCIS 2005.

64 <http://internet-filter-review.toptenreviews.com/internet-pornography-statistics.html>

65 Hughes, 2002, p. 131.

66 See http://www.ecpat.net/eng/Ecpat_inter/IRC/newsdesk_articles.asp?SCID=1561 and http://www.theregister.co.uk/2005/04/22/uk_police_internet/

67 See Council of Europe/MONEYVAL 2005.

2.1.3 Smuggling of persons

Considerable increases in the smuggling of persons and in trafficking in human beings are reflections of globalisation. Both, smuggling and trafficking have become major global businesses of organised crime groups and networks.

Demographic trends in Europe are such that the population in the 46 member States of the Council of Europe is still growing, but at a lower pace, in an uneven manner and with an aging population. In all countries, with the exception of Turkey, fertility is below replacement level. 14 countries show negative natural growth rates, which is only partly compensated by international migration. At least ten countries, including Iceland, Georgia, Armenia, Moldova, Ukraine and a few others have negative migration rates, whereas in 25 countries, the number of immigrants exceeds those of emigrants, including San Marino, Cyprus, Portugal, Switzerland, Luxemburg, Spain, Liechtenstein, Belgium, Sweden and Germany.⁶⁸

According to the International Organisation for Migration, of the 130 million international migrants globally, some 20 to 40 million are irregular migrants, and at any time about 4 million irregular migrants are on the move. Europe is an attractive destination. Some 300,000 to 450,000 irregular migrants are believed to enter the well-off countries of western Europe annually. At the same time, requests for asylum in Europe in 2004 reached the lowest level for 20 years.⁶⁹

The Protocol to the United Nations Convention on Transnational Organised Crime defines smuggling of persons as:

“...the procurement, in order to obtain directly or indirectly, a financial or other material benefit, of the illegal entry of a person in to a State Party of which the person is not a national or permanent resident.”⁷⁰

In Europe, smuggling of persons – as one expression of illegal migration – is a politically highly charged issue and has been on top of the European Union’s agenda for some time, among other things in connection with EU enlargement, free movement of people and access to labour markets, or xenophobia and racism, and tragedies such as the one on the fortified border between Morocco and Ceuta/Melilla in September 2005.

With regard to smuggling of persons and organised crime the following trends and issues are to be noted:

- An increasing number of European countries report on organised crime in connection with smuggling of persons. These reports suggest a strong role of organised crime groups and networks with growing sophistication in the means used for the smuggling of persons, as well as cooperation of different local criminal groups along the smuggling routes. For example:
 - In Albania, smuggling of persons remains a key market of organised crime, although the number of smuggled persons was lower in 2004 when

68 See Council of Europe (2003): Demographic Yearbook 2003. Strasbourg.

69 <http://www.eCRE.org/factfile/statistics.shtml>. The largest share of applications was lodged by asylum seekers from the Russian Federation (mostly Chechens), Serbia and Montenegro, Turkey and Iraq.

70 Article 3 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. By July 2004, the Smuggling Protocol had been ratified by 21 European countries.

compared to previous years. The smuggling of persons is connected with the forgery of identity and travel documents and the corruption of border officials. Many perpetrators are Kosovars. Greece and Italy are the main destinations. Local criminal groups cooperate closely with criminal organisations from "the former Yugoslav Republic of Macedonia" and Serbia and Montenegro.

- In Croatia, it is believed that 7 criminal groups (out of 57 groups identified in 2003) are involved in the smuggling of person. It seems that persons are smuggled from Serbia or Bosnia and Herzegovina through Zagreb to Slovenia.
- France states increasing pressure from illegal migration, which is often organised by structured networks. In 2004, 1,892 persons were arrested for facilitating illegal migration. Data shows that organised crime has a strong foothold in this field. In addition to Chinese, Iraqi-Kurdish and Indo-Pakistani networks, illegal migrants from Maghreb and Africa now also rely on criminal networks. The same is true for migrants from central and eastern Europe. Illegal migration is closely linked to the forgery and counterfeiting of identity documents. 12,051 persons with false papers were apprehended in 2004. Criminal networks involved in the smuggling of persons are increasingly involved in a variety of offences, such as prostitution, money laundering or credit card fraud. With this, organised crime groups and networks operating in different countries or fields more and more link up with each other.
- In the Netherlands, 24 criminal groups were engaged in the smuggling of persons. While the number of people asking for asylum decreased in recent years, the number of criminal proceedings involving smuggling has grown. Smugglers have become more specialised and professional when forging documents, providing transport or arranging safe houses. It would seem that different groups are responsible for different parts of the trafficking route. 70 large-scale investigations into smuggling of persons carried out in 2002/3, showed that individual suspects operated in 20 cases, against hierarchical, stratified organisations in 15 cases, and different types of networks in 25 cases. In a number of cases, the smuggling of persons was also related to trafficking in human beings. With regard to the smuggling of persons, the Netherlands functions mainly as a transit country for illegal migrants from Asia to the United Kingdom.
- Serbia (Serbia and Montenegro) is an important transit country for people smuggled from south-eastern Europe (in particular Bulgaria and Romania) through Croatia and Bosnia and Herzegovina to western Europe. The cost of transfer ranges from EURO 2,500 to 8,000. Smugglers include nationals from source, transit and destination countries. The smuggling of persons is increasing and may serve criminal organisations as a substitute for drug trafficking.
- According to Interpol, the following routes are of particular relevance for Europe⁷¹:
 - From Asian countries through the Central Asian Republics to Russia, and from there via Ukraine, Slovakia and the Czech Republic to western Europe.
 - From Asian countries via Iran and Turkey along the "classical" Balkan route to western Europe.

⁷¹ www.interpol.org

- From sub-Saharan Africa via northern Africa and the Strait of Gibraltar to Spain or to Italy.

Increasingly vessels are used to smuggle persons to Europe, often at high risk to their lives. More than 650 vessels with illegal migrants were intercepted by Spanish authorities in 2003. Several hundred people die every year between northern Africa and southern Europe on their journey across the Mediterranean Sea, and more than 5,000 reportedly died over the last ten years. Smuggled persons pay some EURO 2,000 for a trip from northern Africa across the Mediterranean to Spain or Italy. The reinforcement of the borders between Morocco and the Spanish exclaves of Ceuta and Melilla in 2001 reduced the number of illegal crossings to these territories but in September 2005 led to a drama resulting in the death of several migrants.

- The smuggling of persons – like trafficking in human beings – generates considerable criminal proceeds. The price for smuggling is determined by the nationality and wealth of the migrant, the risks involved in the journey, the degree of professionalism of the service providers, the attractiveness of the country of destination. Average cost for smuggling from northern Africa to Spain is about EURO 4,000 (EURO 6,000 if false identity documents are provided), through Hungary to western Europe (for example from Russia) EURO 800 - 10,000, from Slovakia to Italy US\$ 3,000 - 4,000, for transit through Serbia and Montenegro US\$ 1000, through Croatia EURO 500, from China to Italy US\$ 13,000, from South Asia to Spain EURO 6,000 (or EURO 12,000 with false identity documents).⁷²
- While the protocols to the United Nations Convention on Transnational Organised Crime make a distinction between trafficking in human beings and smuggling of persons – trafficking in human beings is not limited to illegal border crossing or entry but involves exploitation, in practice the distinction between trafficking and smuggling, between consent and coercion is often difficult to make.⁷³ Smuggling may only turn into trafficking in the course of the operation. For example, smuggled persons may be exploited in the form of forced labour or prostitution to repay debts to smugglers, though this may not be apparent to them or the enforcement agencies at an earlier stage. In consequence, reports from some European countries make no difference and mix up smuggling and trafficking. A reason for this may also be the “economics” of law enforcement – smuggled persons are considered illegal immigrants who are to be deported, while trafficked persons are victims that should be given protection.
- The fight against smuggling of persons may have unintended negative consequence from a human rights point of view. As legal entry to the European Union becomes more difficult and border controls more tight, migrants increasingly rely on smuggling organisations to arrange their transport. This is not only true for “economic migrants” but also for refugees. It has been argued that from the 1980s – and in particular after the end of the cold war – the question of asylum for political refugees has first been turned into a problem of immigration control, and that more recently the sealing off of the outer borders of the European Union and initiatives like the Smuggling Protocol of the United

⁷² Council of Europe/MONEYVAL 2005.

⁷³ www.migrationinformation.org/feature (9.8.05).

Nations, by leaving no legal routes open, led to a criminalisation of refugees, pushing them into the hands of smugglers.⁷⁴

2.1.4 Cybercrime

Societies all over the world rely on information and communication technologies (ICT). The number of Internet users worldwide increased almost three times from 300 million in 1999 to some 890 million in 2005, including some 260 million in Europe⁷⁵, and e-commerce is "coming of age" in Europe⁷⁶. Societies are thus highly dependent on ICT and vulnerable to attacks.

Cybercrimes can be divided into the following types of offences⁷⁷:

- Offences against the confidentiality, integrity and availability of computer data and systems (so-called CIA-offences). These include illegal access to computer systems by computer hacking, wiretapping and deceiving internet users (e.g. by spoofing and password fishing, "phishing"), computer espionage (including Trojan horses and other techniques), computer sabotage and extortion (e.g. by viruses and worms, denial of service attacks, spamming or mail bombing).
- Computer-related traditional crimes, such as computer-related fraud (ranging from classical fraud such as invoice manipulations or manipulations of accounts and balance sheets within companies, to online manipulations, fraudulent auctions and online order services, illegal use of ATM cards, abuse of credit cards), computer-related forgery, online grooming of children and other forms of searches for victims, as well as attacks on life through manipulation of flight control systems or hospital computers.
- Content-related offences, in particular child pornography, racism and xenophobia, as well as soliciting, inciting, providing instructions and offering to commit crimes, ranging from murder, to rape, torture, sabotage and terrorism. This category also includes cyberstalking, libel and dissemination of false information through the internet, and internet gambling.
- Offences related to infringement of copyright and related rights, such as unauthorised reproduction and use of computer programmes, audio-/ video and other forms of digital works, or of data banks and books.

Recent information suggests the following trends in 2004/5:

- Estimates on the global economic damage from digital risks doubled from US\$ 250 billion in 2003 to US\$ 500 billion in 2004.⁷⁸
- Throughout the world threats to confidential personal and financial data – in the form of phishing attacks and Trojan horses increased considerably in 2004.⁷⁹

⁷⁴ Morrison, John (2001): How anti-trafficking initiatives criminalise refugees (CARF 61, April/May 2001).

⁷⁵ <http://www.internetworldstats.com/stats.htm>. See also National High-tech Crime Unit (United Kingdom) 2005: High-tech Crime – the impact on UK business 2005. London.

⁷⁶ See the European E-business report 2004 (<http://www.ebusiness-watch.org/resources/documents/eBusiness-Report-2004.pdf>)

⁷⁷ These correspond to the categories of offences to be criminalised under the Convention on Cybercrime (ETS 185) and the Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS 189).

⁷⁸ www.mi2g.com (news alert 16 February 2005)

⁷⁹ According to MessageLab "2004 was the year the big phish was landed" (MessageLab Intelligence (2005): Annual Email Security Report 2004).

According to a Symantec report, the number of attacks blocked by their filters increased by 366% between July and December 2004, that is, from 9 million per week in July 2004 to 33 million per week in December.⁸⁰

- The number of Spams continues to rise. By the end of 2004 Spams accounted for some 74% of e-mail traffic.⁸¹
- The computing systems of private and public organisations are increasingly compromised through viruses, worms and Trojan horses. In 2004, 71% of private and public organisations questioned in Australia and 64% of companies questioned in the USA in 2004 reported incidents. According to Symantec, the IP space of 40% of top Fortune 100 companies was compromised by worms.
- A dramatic rise of bots and botnets is being reported. They are used for distributed denial-of-service (DDOS) attacks, spamming, sniffing traffic, keylogging, spreading new malware, attacks on chat networks, manipulation of online polls and games and mass identity theft.⁸²
- The main source countries of attacks continues to be the United States (37% of attacks in the first half of 2004), but other countries are gaining in importance, such as China (6%), Canada (6%), Australia (5%), Germany (5%), the United Kingdom (4%) and France (4%).⁸³
- Different surveys show increasing economic losses through computer-related fraud.⁸⁴ While in previous years, only 4% of attacks were targeted at e-commerce, by July 2004 some 16% of attacks aimed at e-commerce and were presumably driven by economic motives.⁸⁵
- Websites promoting racism, hate and violence reportedly increased by 300% between 2000 and 2004. Most of these sites are hosted in the USA but many may originate in Europe.
- With regard to copyright offences, the share of pirate software among users in Council of Europe member States in 2004 ranged from 25% in Austria to 87% in Russia and 91% in Ukraine.
- Child pornography represents one of the fastest growing markets with a volume of several billion EURO.⁸⁶ 55% of the material is reported to stem from the USA and a further 23% from Russia. Surveys in 2003 suggest that child pornography accounts for 24% of image searches in peer-to-peer applications. A recent report also points at other forms of harm and violence to which children are increasingly exposed in cyberspace, such as online solicitation (grooming), exposure to material causing psychological harm and harassment and intimidation.⁸⁷

80 Symantec Internet Security Threat Report VII (July – December 2004).

81 See MessageLab Intellingence (2005): Annual Email Security Report 2004 (http://www.messaginglabs.com/binaries/LAB480_endofyear_v2.pdf) and Symantec Internet Security Threat Report VII (July – December 2004).

82 Bots (or “zombies” or “drones”) are installed on a specific internet relay chat (IRC) channel where they can be remotely controlled by an outside attacker. Bots of different infected computers can be combined into a “botnet” consisting up many thousand machines. See: Honeynet Project & Research Alliance (2005): Know your Enemy: Tracking Botnets (www.honeynet.org).

83 Symantec Internet Security Threat Report VI (January – July 2004).

84 US merchants reportedly lost US\$ 2.6 billion through fraud in e-commerce in 2004. <http://retailindustry.about.com/b/a/126525.htm>

85 Symantec Internet Security Threat Report VI (January – July 2004).

86 Estimates on the annual business volume related to child pornography on the internet range from US\$ 3 billion <http://internet-filter-review.toptenreviews.com/internet-pornography-statistics.html> to US\$ 20 billion globally (FBI data).

87 ECPAT International 2005.

Table 2: Software piracy rates and revenues lost⁸⁸

Country	Piracy Rate		Retail Software Revenue Lost (in million US Dollar)	
	2003	2004	2003	2004
Austria	27 %	25 %	109	128
Belgium	29 %	29 %	240	309
Bulgaria	71 %	71 %	26	33
Canada	35 %	36 %	736	889
Croatia	59 %	58 %	44	184
Cyprus	55 %	53 %	8	9
Czech Republic	40 %	41 %	106	132
Denmark	26 %	27 %	165	226
Estonia	54 %	55 %	14	17
Finland	31 %	29 %	148	177
France	45 %	45 %	2,311	2,928
Germany	30 %	29 %	1,899	2,286
Greece	63 %	62 %	87	106
Hungary	42 %	44 %	96	126
Ireland	41 %	38 %	71	89
Italy	49 %	50 %	1,127	1,500
Japan	29 %	28 %	1,633	1,787
Latvia	57 %	58 %	16	19
Lithuania	58 %	58 %	17	21
Malta	46 %	47 %	2	3
The Netherlands	33 %	30 %	577	628
Norway	32 %	31 %	155	184
Poland	58 %	59 %	301	379
Portugal	41 %	40 %	66	82
Romania	73 %	74 %	49	62
Russia	87 %	87 %	1,104	1,362
Slovakia	50 %	48 %	40	48
Slovenia	52 %	51 %	32	37
South Africa	36 %	37 %	147	196
Spain	44 %	43 %	512	634
Sweden	27 %	26 %	241	304
Switzerland	31 %	28 %	293	309
Turkey	66 %		127	
Ukraine	91 %	91 %	91	107
United Kingdom	29 %	27 %	1,601	1,963
USA	22 %	21 %	6,496	6,645

The 2004 organised crime situation report stated some general hypotheses regarding the links between organised crime and cybercrime:

- As economic crime is already a primary activity of organised crime, ICT will further facilitate offences such as credit card, "pump-and-dump" schemes and other kinds of fraud, money laundering, counterfeiting, but also modern forms of traditional crimes such as electronic bank robberies or cyber-extortion.
- Depersonalisation of contacts, ease of access and rapidity of electronic transactions make ICT an attractive tool for money laundering. Virtual casinos, auctions, smart cards, online banking, or the possibility to purchase and sell shares, bonds and futures online offer ample opportunities for money laundering.
- Organised crime exploits the vulnerability of societies, public institutions, business sector and of individuals using the internet. Not only corporations engaged in e-commerce and business-to-business operations, but also individuals using online banking or participating in e-commerce become victims

88 Source: Business Software Alliance (2005): Second Annual BSA and IDC Global Software

Piracy Study

<http://www.bsa.org/germany/piraterie/loader.cfm?url=/commonspot/security/getfile.cfm&pageid=24472&hitboxdone=yes>

of electronic theft and phishing. Victims include children as the most vulnerable group of society.

- ICT offer anonymity, facilitate the logistics and reduce the risks for organised criminals to be prosecuted. It permits remote controlled operations, covert activities, transnational operations, networking and encrypted communication. The penetration and infiltration of banks and corporations or online "bank robberies" through the internet are far less risky than in the real world. Modern computer and communication networks have developed specific characteristics which are useful for criminal perpetrators and difficult to overcome for prosecutors: international computer networks (with anonymous remailers or free access devices to Internet service providers) offer anonymity to perpetrators which can only be lifted if all countries crossed by the communication decide to co-operate. Moreover, computer and communication systems are increasingly offered together with strong encryption and possibilities to hide data.
- ICT are a tool for global outreach and search for potential victims. An example is the Nigerian-fraud schemes which have proliferated through the internet and under which people all over the world are lured into making advance payments for dubious money transfer schemes.
- ICT are likely to change the shape of organised crime, that is, the way people organise themselves to carry out crimes. Cybercrime does not require control over a geographical territory, requires less personal contacts and thus less relationships based on trust and enforcement of discipline between criminals, in short less need for formal organisation. The classical hierarchical structures of organised crime groups may even be unsuitable for organised crime on the internet. ICT may favour those organisations which are already based on flat-structured networking. ICT may also change the characteristics of offenders. In the real world legal businessmen engage in organised forms of economic crime; and, *modus modendi*, the opportunities offered by ICT may tempt legal commercial entities to organise for cybercrime, that is, become organised cyber criminals.

The assumption that most cyber criminals are individual offenders, often juveniles and young adults, is probably still valid. At the same time, reports on organised forms of cybercrime have become more frequent in 2004 and 2005:⁸⁹

- Distributed denial of service attacks are carried out with the aim of extortion of targeted companies. In this way, a traditional market of organised crime, the protection racket, goes online.⁹⁰
- Attackers using botnets are often highly skilled and organised and thus possibly part of organised criminal structures.⁹¹
- Organised cyber criminals steal, buy and sell millions of credit card numbers and identification documents and threaten electronic commerce. Their structures may include administrators/managers for decision making and enforcement, moderators (running information/discussion fora), reviewers judging the quality of merchandise, vendors selling merchandise and services, members providing merchandise or sharing information. Modus operandi include

⁸⁹ See for example: " Virtual Criminology Report 2005: The first Pan-European Study into Organised Crime and the Internet" or "Klick, du bist tot" (Der Spiegel no. 20/2005)

⁹⁰ See <http://www.crime-research.org/news/24.05.2005/Hackers-companies-encounter-rise-cyber-extortion/>

and a large range of other articles on this topic on the web.

⁹¹ See Honeynet reports on www.honeynet.org

- encrypted communication, use of proxy servers, money laundering ("e-gold") and at times also intimidation.⁹²
- Organised criminals infect millions of computers and sell them as spam proxy server and hosts for websites for selling pornography, pirate software or fronting as fake banks and for identify theft.⁹³
- Child pornography seems to have become an important activity of organised criminals, with criminal networks sharing child pornography online and operating fee-based sites.⁹⁴

It would seem that the hypotheses formulated in the 2004 report are being confirmed. While prior to 2004 organised cyber crime was rather rare and a potential risk, the exploitation by organised criminals of the economic opportunities offered by the Internet and of the dependency of societies on ICT has become a reality.

2.1.5 Other activities

EXTORTION

Extortion – including protection rackets and blackmailing – is a “traditional” activity of organised crime groups and networks, and remains an important crime market in many European countries. For example: in Armenia 13 cases were investigated in 2004 leading to 15 convictions; in the Czech Republic 1641 cases were recorded in 2004; in Italy, the 'Ndrangheta in Calabria and the mafia-type associations in Puglia resort to extortion; in the Netherlands extortion was named in 28 out of 289 investigations into organised crime in 2004; and in Poland, 7348 cases of violent crimes (including extortion) were investigated in 2004. In Northern Ireland, extortion is mostly carried out by paramilitary organisations in the form of payments for “security services” as a means of fund raising as well as maintaining control over the community.⁹⁵ In Switzerland, investigations into extortion and racketeering led to 79 convictions in 2004, and in Turkey this is the second most important market of organised crime groups and networks with 4884 cases and 8985 suspects.

PROPERTY CRIMES

Property crimes – in particular theft and burglary – account for the largest share of criminal offences committed in Council of Europe member States. Organised theft and receiving of stolen goods is a major market of organised crime.

Among property crimes, the illicit traffic in cultural property seems to have gained in significance as a market for organised crime groups as well as an opportunity for money laundering. While smuggling in cultural property involves objects which may have been legally acquired but the trade of which may be subject to restrictions, trafficking implies the trade in objects which have been illegally acquired. In most cases, smuggling or illicit traffic in cultural property is carried out across international borders. Countries which are poor or in crisis or which exercise little control run the greatest risk of being victimised. Presently these include Afghanistan, Iraq, Africa or Latin America. Interpol provides data on objects stolen, wanted and recovered.⁹⁶

92 See reports on the web on “Geekfathers” and “CyberCrime Mobs” (with examples such as Shadowcrew, Stealthdivision, Muzzfuzz and others)

93 <http://www.computerworld.com/securitytopics/security/story/0,10801,95501,00.html>

94 See http://www.ecpat.net/eng/Ecpat_inter/IRC/newsdesk_articles.asp?SCID=1561 and http://www.theregister.co.uk/2005/04/22/uk_police_internet/

95 Organised Crime Task Force www.octf.uk

96 <http://www.interpol.int/Public/WorkOfArt/Search/RecentThefts.asp>

CONTRABAND SMUGGLING

Smuggling of commodities involves the illegal transport of such commodities across borders in order to evade taxes on these goods. Organised crime exploits the differential taxes of highly taxed goods such as cigarettes, alcohol and petroleum. According to reports received, in most European countries, smuggling is a market of organised crime – however, a limited one. These include Armenia, Czech Republic, Lithuania, Moldova, Poland, Serbia and Montenegro, Sweden (reporting high levels of alcohol and cigarette smuggling) the UK, and “the former Yugoslav Republic of Macedonia”.

No recent information has been received with regard to the smuggling of petroleum products, metals (such as nickel, copper and cobalt), and other natural resources which in the 1990s – purchased locally at subsidized prices and then smuggled abroad and sold at world market prices – contributed to the “criminalisation of economies” in several countries of the former Soviet Union.

A number of European countries continue to express concern regarding tobacco smuggling. Europe plays a major role in world tobacco markets. Council of Europe member States account for some 30% of world production in cigarettes, 60% of global exports and more than 50% of global imports. It is estimated that some 25% of cigarettes produced globally or more than 210 billion cigarettes (the difference between reported exports and imports) go to the black market. Of these about one third are believed to be smuggled into and within Council of Europe member States. Tobacco smuggling undermines public health policies and causes losses in public revenues. For example, in the UK where smuggled cigarettes account for 15% of the market, lost revenue amounted to £ 1.9 billion from cigarettes and £ 750 million from hand-rolled tobacco smuggled in 2003/4.⁹⁷ Organised crime groups and networks play a key role in the tobacco smuggling, reportedly often in collusion with multinational tobacco companies.

SMUGGLING OF ARMS

The adoption of the Protocol on the Illicit Manufacturing and Traffic in Firearms supplementing the Palermo Convention underlined that there are links between organised crime and the smuggling in arms. While this protocol is limited to portable barrelled weapons, the OSCE in 2000 adopted a broader approach by focusing on small arms and light weapons (SALW), which were defined as follows:

“small arms and light weapons are man-portable weapons made or modified to military specifications for use as lethal instruments of war. Small arms are broadly categorized as those weapons intended for use by individual members of armed or security forces. They include revolvers and self-loading pistols; rifles and carbines; sub-machine guns; assault rifles; and light machine guns. Light weapons are broadly categorized as those weapons intended for use by several members of armed or security forces serving as a crew. They include heavy machine guns; hand-held under-barrel and mounted grenade launchers; portable anti-aircraft guns; portable anti-tank guns; recoilless rifles; portable launchers of anti-tank missile and rocket systems; portable launchers of anti-aircraft missile systems; and mortars of calibres less than 100 mm”.⁹⁸

97 NCIS 2005.

98 OSCE Document on Small Arms and Light Weapons (adopted at the 308th Plenary Meeting of the OSCE Forum for Security Co-operation on 24 November 2000).

Global legal trade in SALW has been estimated at US\$ 4 billion in 2002, and illicit traffic at about US\$ 1 billion. More than 1100 companies in 98 countries are involved in small arms production. The USA and the Russian Federation produce 70% of global firearms, and another 30 countries are considered significant producers. These include 18 countries of central and eastern Europe. In 2000, the European Union accounted for 43% of documented exports while other European countries had a share of 12 %.⁹⁹

Information on the links between organised crime and arms smuggling remains scarce. In the 1990s, criminal organisations operated in the midst of the Yugoslav conflicts, ETA and Real IRA were believed to obtain their arms from the areas of former Yugoslavia, and Russian and other European criminals shipped weapons to Sierra Leone in violation of UN embargoes. It would seem that such smuggling continues to fuel armed conflicts not only in Europe but also in other parts of the world. For example, European companies reportedly are amongst those providing weapons to conflict parties in the Democratic Republic of Congo.¹⁰⁰

2.1.6 Money laundering

The pursuit of profit is the common denominator of all organised crime and of most other forms of serious crime. Proceeds from crime may be consumed by criminals or hidden away. However, in order to prevent them from being traced by law enforcement and in order to permit their investment in other business, crime proceeds need to be laundered in a way that they become indistinguishable from legitimate money. The efforts made by launderers depend on the intensity of controls.

Initially aimed at the proceeds of drug-related crime¹⁰¹, the adoption of the Strasbourg Convention in 1990¹⁰², and subsequently of the recommendations of the Financial Action Task Force (FATF),¹⁰³ led to the establishment of anti-money laundering systems aimed at the proceeds of all crimes or at least of all serious crimes in European countries. These systems are primarily set up to detect suspicious transactions which may be related to money laundering. Compliance by European countries with international standards is evaluated by MONEYVAL (Council of Europe) and the FATF.

The events of 11 September 2001 triggered a renewed interest in anti-money laundering measures with an additional focus on terrorist financing and greater sensitivity of law enforcement and financial institutions. In 2003, the 40 Recommendations of the FATF were amended and 8 special recommendations on terrorist financing were adopted.¹⁰⁴ In May 2005, the Council of Europe opened a new convention for signature, that is, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198). This instrument, among other things, extends the Strasbourg Convention of 1990 (ETS 141) to also cover terrorist financing. In June 2005, the European Union adopted the Third Directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

99 Small Arms Survey 2005.

100 See UN Office for the Coordination of Humanitarian Affairs (5 July 2005). <http://www.globalsecurity.org/military/library/news/2005/07/mil-050705-irin02.htm>

101 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

102 Council of Europe Convention on the Laundering, Search, Seizure and Confiscation of Proceeds from Crime of 1990 (ETS 141)

103 <http://www.fatf-gafi.org>

104 A 9th recommendation was added in 2004.

The improvement of international standards and national regulations – including an enlarged list of entities required to report – and the creation or strengthening of financial intelligence units in most countries¹⁰⁵ of Europe led to a large increase in suspicious transactions reporting. For example:

- In Belgium, CTIF-CFI received 11,234 reports in 2004 (compared to 9,954 in 2003). 664 cases were sent to the prosecution.¹⁰⁶
- In France, TRACFIN (the French financial intelligence unit), received 10,832 suspicious transaction reports in 2004, compared to 9,019 in 2003.¹⁰⁷
- In Germany, 8,062 suspicious transaction reports were submitted to the financial intelligence unit of the Bundeskriminalamt in 2004, compared to 6,602 in 2003. This confirms the trend of an increase of some 20% annually in recent years.¹⁰⁸
- In Liechtenstein, suspicious reports increased from 172 (in 2003) to 234 (in 2004).
- In the Netherlands in 2004, the Unusual Transactions Disclosure Office (MOT) considered 41,002 reports as suspicious and referred them to the prosecution – compared to 37,748 reports in 2003.¹⁰⁹
- In 2004, the State Department for Financial Monitoring of Ukraine in 2004 received 725,569 financial transaction reports. Following analyses, 164 cases were referred to the General Prosecutor's Office and other law enforcement bodies which led to 54 criminal cases being initiated.¹¹⁰
- In the United Kingdom, the number of suspicious activity reports received by the National Criminal Intelligence Service increased from about 100,000 in 2003 to over 150,000 in 2004.

Since most investigations of organised crime are drug-related, it can be expected that most laundering is detected in connection with drugs. However, as economic crime gains in importance, fraud and embezzlement make up a large part of money laundering investigations, at least in countries with an all-crimes approach. For example:

- In Belgium in 2004, among the 664 files submitted to the prosecution, drug trafficking accounted for 17% of the predicated offences, while serious tax crimes and fraud accounted for 26%, the smuggling of goods for 19%, and trafficking in human beings (including exploitation of prostitution) for another 13%.¹¹¹
- In Romania, in 2002 and 2003, more than 80% of the money laundering cases investigated were related to embezzlement and tax evasion, and only 8% to organised crime such as drug trafficking or trafficking in human beings.
- In the Russian Federation, fraud (30%), illegal entrepreneurship (20%), misappropriation of funds and embezzlement (15%) accounted for two thirds of the investigations into money laundering in 2002.

In Switzerland, on the other hand, drug trafficking has been the predicate offence in 85% of cases of convictions for money laundering in recent years.¹¹²

¹⁰⁵ In Switzerland, however, reporting decreased 863 in 2003 to 821 in 2004 which is still substantially higher than in the preceding years (MROS 2005).

¹⁰⁶ <http://www.ctif-cfi.be/fr/index.htm>

¹⁰⁷ Tracfin 2005. <http://www.minefi.gouv.fr/tracfin/ressources/raptracfin2004.pdf>

¹⁰⁸ Bundeskriminalamt 2005.

¹⁰⁹ More specifically to the Office for the Provision of Police Support to the National Prosecutor for the Disclosure of Suspicious Transactions (BLOM).

¹¹⁰ Ukraine/State Department for Financial Monitoring 2005: Report 2004. Kyiv.

¹¹¹ CTIF-CFI: Annual report 2003.

¹¹² MROS 2005. Based on an analysis of court judgments between April 1998 and July 2003.

Although anti-money laundering systems are primarily preventive and although money laundering is a complex offence which in most cases requires conviction for a predicate offence, in Europe the overall number of cases before court and ending in convictions nevertheless remains rather low in general, in particular when compared with the large number of suspicious transaction reports. This is not true for all countries. In Switzerland, there were 481 convictions for money laundering as well as 48 convictions for aggravated money laundering committed by professional launderers or criminal associations between April 1998 and December 2004.¹¹³

Money laundering methods are usually described using a three-stage model:

- Placement – the ways in which direct proceeds from crime are channelled into the financial systems, typically in the form of cash payments.
- Layering – the circulation of funds through a succession of financial transactions to erase any connection of the placed capital to its criminal origin, typically through money transfers or cheques
- Integration – the investment of originally criminal proceeds into legal and economic flows, typically into real estate, business capital, valuable objects.

Typologies noted in 2004/5 include:

- In France, casinos remain attractive for money launderers. A recurrent theme, reported by the banking sector, is "fraud in public advertisements", which means that companies are either defrauded in that advertisements paid for are never published, or that companies hide funds by paying amounts in no proportion to the service provided. Funds are then transferred by the advertisement firm abroad or withdrawn in cash. Other modes reported in 2004/5 include cash transfers in the building sector, the use of the insurance and real estate sectors and operations involving the exchange of francs against euros.
- In Germany, particular types of money laundering noted in 2004 include the opening of a bank account in a German enclave abroad in order to transfer funds from abroad to Germany, the atypical use of investment accounts for short-term payments, the purchase and immediate sale at loss of precious metals, or the use of multiple life insurance contracts. Cash transactions, physical and legal persons with off-shore connections, forgery of documents and anonymity through the use of figure heads are important features in relation to suspicious report received by the FIU.¹¹⁴
- In the Netherlands, organised crime groups used money transfers (15 groups), foreign currency exchange (12 groups), underground banking (8 groups) and smurfing (6 groups). The Netherlands Antilles, Turkey and Colombia were the most common destinations for money transfers. "Hit-and-run money laundering" was used 80 times. 70 arrests were made and EURO 11.3 million were confiscated in 2004.
- In Ukraine, "popular" tools for money laundering involve transactions with securities, bank metals, real estate, VAT carousel fraud, operations with "junk" assets, commercial operations without economic sense, structured payments (smurfing), money transfer to the accounts of non-resident companies whose

113 MROS 2005. While the number of cases before court and convictions are generally low in Europe, in the USA, in 2001, 1,477 defendants were charged with money laundering, of which 1,243 were convicted for money laundering in district courts. 60% of predicate offenses were related to embezzlement and fraud, 17% to drugs charges and 7% racketeering or customs offenses. <http://www.ojp.usdoj.gov/bjs/pub/pdf/mlo01.pdf>

114 Bundeskriminalamt 2005.

registration has been cancelled. The use of forged or stolen identity documents and connections with criminal organisations have been noted.¹¹⁵

In December 2004, the Council of Europe's MONEYVAL and the FATF jointly carried out a typologies exercise in Moscow in cooperation with ROSFINMONITORING, the Russian financial intelligence unit.¹¹⁶ The following issues were pointed at:

- The use of alternative remittance systems (ARS), that is, value or money transfer systems which operate outside conventional banking channels. While ARS may provide a legitimate and often necessary service, they are highly vulnerable to criminal abuse for money laundering and terrorist financing or are sometimes specifically set up for these purposes.
- The insurance sector which appears to be "attractive to money launderers seeking to place funds into a financial product that will provide them with a reliable, clean return of funds invested." Once funds have moved into an insurance product and subsequently a payment has been received, these funds appear legitimate. Inconsistent regulation and supervision of the insurance industry provide opportunities for money launderers with a low risk of detection.
- Trafficking in human beings and illegal migration are highly profitable core businesses of criminal groups and networks. Payments associated with these offences are most often made in cash and outside the countries where the smuggling or trafficking take place. Different methods are used, including underground banking and ARS, body carriers and others. Money laundering in this context is thus very difficult to detect through suspicious transaction reporting. Financial investigations targeting the proceeds of specific trafficking or smuggling offences would need to be carried out more systematically in the course of the criminal investigation.

2.2 ORGANISED CRIME GROUPS AND NETWORKS

2.2.1 Organised crime cases and groups

Information provided by member States reflect continued difficulties in the identification of organised crime groups and thus in the reporting on organised crime. Countries applying the criteria for organised crime in a broad manner may report thousands of cases and hundreds of groups, while others report only small numbers or are unable to provide any data. This problem is further compounded by the trend towards organising for crime in the form of loose networks with fluid boundaries and changing composition.

The 2005 European Union Organised Crime Report prepared by Europol notes the following organised crime groups within the European Union:

- "Indigenous OC groups still pose the main threat to the EU.
- Italian Mafia-type OC groups are particularly dangerous for their ability in infiltrating the public and economic sectors ...
- Lithuanian groups forge alliances with international OC, and are rapidly expanding all over the EU. They are extremely skilled in money counterfeiting ...
- Dutch OC groups are specialised in drug production and trafficking ...

¹¹⁵ Ukraine/State Department for Financial Monitoring 2005.

¹¹⁶ The report is available at: <http://www.fatf-gafi.org/dataoecd/16/8/35003256.pdf>

- German OC groups are seldom mentioned in trans-national activities, but their significant profits and the fact that they are involved in types of crime that require a vast network of international connections suggest that their importance on a continental level is underestimated and their actual power not fully known.
- Polish OC groups are among the fastest growing ...
- Ethnic Albanian criminal groups pose a significant threat to the EU because of their involvement in drug trafficking, THB and money laundering ...
- Russian and other FSU OC groups are involved in practically all types of crime ... Russian OC is also highly sophisticated in the area of financial crime, fraud and money laundering.
- Turkish OC is mainly involved in heroin production and trafficking to the EU...
- Chinese OC groups are well established in the EU ... involved in illegal migration, THB and non-cash payment fraud ...
- Moroccan OC groups ... are the major provider of cannabis to the EU drug market. They are also active in THB and illegal migration.
- Colombian OC groups control cocaine production and global trafficking ...
- Outlaw motorcycle gangs are present in force in the Nordic countries, Germany and Belgium, but are now expanding their activities to the new Member States ... “

Information provided by different member States suggests, however, that ethnicity has become less useful as a criteria for the identification of organised crime groups, which in many countries are said to more often have a multi-ethnic composition. In Germany, for example, in 2004 (as already in 2002 and 2003), about 20% of organised crime groups and networks have suspects from one nationality. In the Netherlands, on the other hand 55% of groups are homogenous in terms of nationality and origin of suspects.

And what has been stated for EU countries is also reported from other European countries: most groups are indigenous, that is, most organised criminals operate in the country of which they are nationals.

2.2.2 The structure of organised crime groups and networks

Reports on organised crime basically make a distinction between, on the one hand organised crime groups as ethnically homogeneous, formally and hierarchically structured, multi-functional bureaucratic criminal organisations which confront society; and on the other hand, criminal networks which are more loosely structured and which cooperate in varying compositions for particular criminal enterprises.¹¹⁷ While the pyramidal/hierarchical model appeared to have dominated in the past, the trend now seems to be towards loose network structures – at least in Europe.¹¹⁸

Examples of pyramidal, hierarchical organisations include:

- family-type organisations, such as the Costa Nostra in Sicily which consists of some 180 groups with 6000 members;
- groups in the countries of the former Soviet Union with a clear division of tasks ("Vor v zakone" - "thief in law", "papka" - "fathers", "starchina" - "senior officers", "obstchak" - "joint fund holders", brigade leaders, fighters, financiers,

117 With regard to typologies of organised crime groups, there are many other proposals. For example, UNODC – in a pilot survey of organised crime groups in 16 countries – suggests five types of structure (UNODC 2002a).

118 See Europol 2004.

- network personnel) and where membership fees ("krysha" – the roof) are paid to the "obstchak";
- British "firm"-type organisations with permanent members, distinct roles and clear chains of command.

Criminal networks on the other hand may consist of individuals or small cells of criminals, as well as legal structures (most often legal commercial structures) and professionals or facilitators (such as lawyers, accountants, financial services experts, public notaries – not always appreciating the criminal purposes) which are more or less loosely affiliated and cooperate in varying compositions for particular criminal enterprises:

- Some networks may be directed by a core group of organisers, others may assemble according to needs and opportunities.¹¹⁹
- They may range from very small associations to large transnational networks.
- Some may be fluid and amorphous, with very loose membership and chains of command, while others may be more structured and stable, some may focus on a single purpose or product while others may be involved in a broad range of activities.
- Some individuals or cells or some of the activities of the network may be perfectly legal while others may be criminal.

Member States of the Council of Europe report on different types of criminal organisations found in their respective country. Network-type organisations appear to be more widespread than pyramidal organisations. The exception is Lithuania where the latter type of organisation seem to be predominant.

However, one should be cautious and avoid being too schematic by opposing pyramidal versus network-type of organisations. As noted in the report by the Netherlands, this may not explain the many forms of collaboration among criminals nor the dynamics, changeability, complexity and arbitrariness of criminal collaboration. Groups found in the Netherlands include traditional pyramidal organisations, family firms, various forms of networks, chain structures, ethnically closed and homogeneous groups, hybrid models and others.¹²⁰

According to a number of country reports, the type of organisation depends on the criminal activities in which a particular group or network is involved. Those trafficking drugs may have different structures, modi operandi and needs for expertise than those committing economic crime, or those involved in multiple types of crime.¹²¹

The analytical approach to organised crime may need to be adjusted. Often, money or other crime proceeds are the only common denominator of different individuals, cells or groups, legal or illegal structures which organise for crime. Network analyses – such as those used by financial intelligence units to link suspicious financial transactions to criminal offences – may not only allow to identify a broader range of criminal

119 See Williams 2001.

120 The difference may anyway be less one of different structures but one of the analytical approach. Network analyses may help explain a broad range of different organisations, including hierarchical ones.

121 The report from Sweden, for example, distinguishes between networks and groups of "criminal experts" (engaged in specific activities such as smuggling, economic crime or trafficking in human beings) and "criminal generalists".

enterprises but also to better understand the links between criminal and legal structures of society.¹²²

2.2.3 Modi operandi

The relationship between organised crime groups and networks and society is one of the most critical issues with regard to organised crime. The question is whether it is one of confrontation, that is, organised crime versus society, or whether it is of a rather symbiotic nature. An assessment of the modi operandi of organised crime groups and networks provides some insights in this respect.

USE OF VIOLENCE AND INTIMIDATION

Within criminal circles, the use of violence is widely used by organised crime groups and networks to enforce discipline within their group or against competing groups. This is most often report in relation to drug trafficking. For example:

- In the Netherlands in 2004, there were 204 murders or manslaughters in total, of which 36 could be linked to criminal circles, the majority of them related to drugs. Within criminal circles sanctions may also be of financial nature, or – in positive terms – take the form of incentives and rewards.
- The same appears to be the case in Spain, where inner- and intra-group violence is generally related to drugs (including 7 persons killed in 2004).
- In the United Kingdom, violence and intimidation are also most marked among crime groups involved in drug trafficking, in particular heroin and crack.

With regard to violence and intimidation outside criminal circles, that is, against 3rd parties, In most countries witnesses against organised crime are believed to be at risk, in particular if they are collaborators of justice, that is, (former) criminals themselves. Hence the increasing number of witness protection programmes in Europe.

Intimidation and violence against victims are intrinsic part of specific offences, such as robbery, extortion and racketeering, as well as trafficking in human beings:

- In France, violence is particularly reported with regard to trafficking in human beings by eastern European groups in order to force women into prostitution. This may range from psychological pressure, to physical beating, gang rape and assassinations. Witchcraft and black magic may be resorted to in order to exert pressure on African victims.
- Similarly in the Netherlands, psychological and physical damage was inflicted most often on victims of trafficking in order to force them into prostitution.
- Violence against victims of trafficking in human beings or witnesses in trafficking cases is reported from different countries of south-eastern Europe.
- In Spain, 22% of criminal groups used violence and intimidation outside criminal circles, in particular in relation to trafficking in human beings for the purposes of sexual exploitation.

¹²² As underlined in Best Practice Survey 7 (prepared by the PC-S-CO of the Council of Europe) on the effectiveness of provisions criminalising membership in criminal organisations, it may be useful for countries to have in place in the general or special part of their criminal legislation, in addition to the legal framework on membership and setting up of criminal organisations, provisions allowing them to deal with weaker forms of organised crime (criminal associations, aggravating circumstance in case of multiplicity of offendership etc.).

- In Slovakia, various forms of intimidation and violence may be applied against competitors for public contracts.
- In the United Kingdom – as in many other countries – violence is used to recover debt and enforce business deals. Apparently, groups which are more established are more likely to use coercion.¹²³

In most European countries, organised crime groups and networks avoid open confrontation with public authorities. Exceptions include Italy, where intimidation and violence against state bodies are used by the Camorra,¹²⁴ the 'Ndrangheta,¹²⁵ the Sacra Corona Unita and other groups in Puglia, but less now by the Cosa Nostra which – following the experience of the 1990s – appears to seek a form of accommodation with the state. In some countries – as reported for example by Slovakia – blackmail and other forms of intimidation may be applied against officials involved in public tendering processes.

In general, however, it would seem that organised criminals prefer to engage in symbiotic relationships with public structures facilitated by corruption and the use of influence.

CORRUPTION AND USE OF INFLUENCE

The use of influence on the public administration, politicians, the criminal justice system, media but also private sector representatives is a primary tool of organised crime groups and networks. This may take the form of corruption – not only in the sense of bribery, but also in the form of trading in influence – and other forms based on patron-client relationships, nepotism, favouritism, family ties, ethnic relationships, relations to persons in powerful positions or “politically exposed persons”. Financing of individual politicians, of political parties and electoral campaigns may play an important part in this respect.

Such use of influence – symbiotic relationships based on mutual interest – are more sustainable and reliable than the use of violence and intimidation.

Increasingly, organised crime groups and networks use corruption in a professional manner by hiring legal and business experts as intermediaries or brokers or by planting associates in relevant political or administrative positions.

Corrupt officials may tolerate or participate in criminal activities or protect criminals from law enforcement, or – in the case of senior officials – sponsor organised crime groups and networks. In some countries in transition, corruption appears to have permeated most structures of public life, including law enforcement and criminal justice systems. Low salaries, unemployment, insecurity and poverty, and often the example set by senior officials, make public officials vulnerable targets and reliable partners of organised crime groups and networks.

In more affluent countries, corruption is widely used in connection with organised crime, but plays a less central role. Opportunistic approaches prevail, that is, corruption is used to facilitate a crime if the opportunity arises or if vulnerable officials can be targeted.

123 NCIS 2005.

124 In 2004, conflicts among Camorra-gangs in Naples cost more than 100 lives.

125 In October 2005, for example, a leading politician from Calabria was murdered in "Ndrangheta-style" (<http://www.time.com/time/europe/magazine/printout/0,13155,901051031-1121979,00.html>)

With the expansion of economic crime, corruption as a primary tool of organised crime is likely to gain in importance also in these countries, not only with regard to public-private corruption, but also in relation to corruption in the private sector.

While there is a general perception – as reported by most countries – of close links between corruption and organised crime, hard data and analyses are limited:

- In 2004, Albania recorded 443 prosecutions for corruption, although it is not clear how many of them were related to organised crime.
- Croatia recorded 2 corruption cases linked with 2 organised crime groups involving 6 persons. Both cases were prosecuted. Other corruption cases were recorded, including those of judges and court officials in charge of registry offices issuing title deeds. No link with organised crime has been revealed.
- In the Netherlands, about 25% of criminal groups investigated in 2004 made use of “corruptive contacts”. Customs officials were most often approached in connection with the trafficking in goods and people.
- In Poland, the investment of proceeds from drug trafficking and prostitution into the hotel and catering sector – and thus the blending of illegal with legal money – is reportedly accompanied by corruption.
- According to official data, Montenegro registered 305 corruption related cases in 2003 and 221 cases in 2004, none of which indicated any links with organised crime. Most corruption related cases in Montenegro, for which there are very few convictions, account for abuse of official position.¹²⁶
- Serbia recorded 18 cases involving 4 organised crime groups with 81 perpetrators. Of these, 15 cases were prosecuted along with all 4 groups and 53 perpetrators.
- In 2004, “the former Yugoslav Republic of Macedonia” recorded 536 corruption cases involving 664 perpetrators of which 505 cases account for abuse of official position, while 31 cases involve other corruption criminal acts. No link with organised crime has been revealed.
- In Spain in 2004, 24 out of 494 criminal groups are reported to have used various forms of trafficking in influence. The largest share, (that is, 15 groups) tried to corrupt or influence police authorities, followed by corruption in the business sector.
- In Sweden, from what is known, no case of corruption has been reported in relation to the judicial system, the police or the prosecution. Corruption may happen in the prison system.
- In Ukraine, 34 out of 721 organised crime groups and networks were identified to rely on corruptive relations.
- In the United Kingdom, about one quarter of serious organised crime groups are believed to use corruption as an alternative to coercion in order to secure help from people with access to information or influence. However, there are “no reliable figures for the scale and spread of corruption”.¹²⁷

¹²⁶ In Montenegro’s criminal code corruption is not defined as a specific criminal offense. Rather, there are several criminal offences with elements of corruption such as passive and active bribery, insider trading, abuse of official position, and abuse of position in economic sector, embezzlement, etc., carrying sentences between 2 and 12 years. The reason for a low numbers of convictions appears to be in securing evidence, especially for bribery. Use of special investigative means (SIMS) is not allowed for corruption related crimes.

¹²⁷ NCIS 2005. This may be a reasonable generalization for most or all member states. Corruption detection and investigation is a reflection of the competence and determination (including legal independence) of the authorities.

These reports suggest that further research on the links between organised crime and corruption are required.

SHIELDING PRACTICES

Shielding practices have become an important modus operandi of organised crime groups and networks to protect themselves from law enforcement and maintain their position on the criminal market against competitors.

The most common shielding practices are aimed at protecting communication between criminals; they include the use of several means of communication and frequent variation of these means, coded oral and written messages and data encryption.

Defensive shielding against public authorities may include counter-surveillance, bribery, strategic networking, buying information or telephone tapping of investigative authorities.¹²⁸

Offensive approaches appear not to be widespread but may include active tracking of civil servants, pressure on civil servants or their families, creating conditions for blackmail and others.

Shielding practises are a major reason for the duration and complexity of investigations into organised crime. An important tool to shield criminal activities is the use of legal commercial structures.

USE OF COMMERCIAL STRUCTURES

Almost all countries report the use of legal commercial structures by organised crime groups and networks, in that they either collaborate with one or more insiders or in that they own or invest in legal structures, thus blending legal and illegal activities, or that they set up shell companies.

The use of commercial structures serves different purposes:

- as a cover or shield for illegal activities;
- to provide logistical support and other services for criminal activities;
- to facilitate money laundering;
- to interface with public authorities and other legal structures of society;
- to participate in public procurement;
- to diversify business interests;
- to control or monopolise markets.

Sectors such as real estate, car dealers, the catering industry, construction and works, night life, gambling and the sex industry, security firms, transport, and import/export companies are still preferred by organised crime groups and networks, since they are either cash-intensive or related to the criminal activities carried out by such groups.

In the Netherlands, in 182 investigations for which detailed data was available, 85 groups were found to have made use of business structures or professionals. The transport (11 groups) and real estate sectors (10 groups) were mentioned most often, followed by import/export companies (7 groups) and the hotel and catering industry (6

128 See report by the Netherlands.

groups). With regard to individual professionals, financial services experts (9 groups), lawyers (8 groups) and accountants (8 groups) were used most often.

However, as organised crime groups and networks become more sophisticated and professional, any sector may be used, ranging from investment in shares in foreign companies, the creation of or participation in financial holdings, investments in the oil industry, interests or ownership of banks. Organised crime groups and networks may provide loans or invest in a company with the purpose of making a subsequent take over, sometimes without informing others about changes in ownership.

The increasing use of legal commercial structures by organised crime groups and networks throughout Europe points to an important trend, namely intensifying links between the "under-" and the "upper world" with the boundaries of organised crime groups and networks becoming increasingly blurred. However, this is not to argue that organised criminals wish to somehow gain control over the levers of power in society: such ambitions and conduct are actually rare, especially in western Europe.

TRANSNATIONAL OPERATIONS

According to Article 3, 2 of the United Nations Convention on Transnational Organised Crime, an offence is "transnational in nature" if:

- (a) It is committed in more than one State;
- (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- (d) It is committed in one State but has substantial effects in another State.

While in almost all member States of the Council of Europe, the majority of suspects involved in organised crime is reported to be from the country where the offences are committed, they also report the participation of nationals from a variety of other countries and an international element. For example:

- In Germany, suspects in total had 109 different nationalities in 2004. 37% had German citizenship, followed by Turkish, Polish and Italian suspects. 84% of groups operated internationally.
- In Italy, groups from eastern Europe, Latin America, Africa and Asia operate in addition to the Italian mafia-type associations. The "Ndrangheta, in particular, operates internationally and has concluded agreements with foreign groups.
- In the Netherlands, 73% of the suspects had Dutch nationality (although only 48% were of Dutch origin). 8.5% were of Turkish, 7.5% of Surinamese, 6% of Moroccan, and 5.8% of Antillean origin.
- In south-eastern Europe, in particular among the countries of the former Yugoslavia, close cooperation among criminals from different nationalities and ethnic groups has been a particular characteristic of organised crime already during the conflicts in the 1990s.

These reports seem to support the argument that organised crime consists of networks whereby individuals or cells or groups are involved in particular transactions in a given country, while linking up with individuals and groups in other countries.

USE OF INFORMATION AND COMMUNICATION TECHNOLOGIES¹²⁹

Information and communication technologies gain in importance not only to facilitate communication among members of organised crime groups and networks and shielding through encryption, but also as tools to commit "old forms" of crime more efficiently as well as to move into new fields of crime.

As noted in the chapter on cybercrime, in 2004/5 there is an increasing number of reports as to how organised crime increasingly exploits the economic opportunity offered by the Internet.

It seems that as societies around the world gradually turn into "network societies", organised crime groups will even more take on the form of criminal networks.

129 For more on this topic see the chapter on cybercrime.

2.3 COUNTRY SUMMARIES¹³⁰

Member State	Organised crime activities	Organised crime groups and networks	Trends and threat assessment
Albania ¹³¹	<p>In 2004, 1448 criminal proceedings involving 1353 defendants were registered related to organised crime, smuggling and trafficking in human beings and corruption.</p> <ul style="list-style-type: none"> ▪ 645 prosecutions (43% more than in 2003) were related to smuggling and trafficking in human beings ▪ 360 prosecutions to drug production and trafficking ▪ 443 to corruption-related offences. 	<p>In 2004, 16 prosecutions were aimed directly at criminal organisations. Family and other social ties link members of criminal organisations. Groups have links to legal businesses and members of such groups also have ties to officials in customs, law enforcement, public administration etc. Corruption is widely used to protect criminal activities and prevent prosecution. Proceeds are often used to expand legal business or to fund media, cultural events or political parties.</p>	<p>Organised crime and corruption threaten reforms and contribute to poverty.</p> <p>Prosecutions recorded by the Prosecutor General increased by 18% in 2004 compared to 2003. Among other things this appears to be due to increased trust in the criminal justice system.</p> <p>Major increases in cases related to smuggling and trafficking in human beings are noted.</p> <p>Corruption continues to facilitate organised crime.</p>
Andorra	<p>Organised crime remains of limited scale in Andorra. The main criminal activities are:</p> <ul style="list-style-type: none"> ▪ Fraud and other economic crime (17 cases with 17 groups and 75 suspects) ▪ Drug trafficking (4 cases with 4 groups and 115 suspects) ▪ Money laundering. 	<p>Groups involved in drug trafficking are organised as networks and included Spanish, Portuguese and Andorran nationals.</p> <p>Groups involved in economic crimes are based abroad and use the financial sector for committing offences and launder their proceeds.</p>	No new trends have been observed compared to 2003.
Armenia	<p>Major organised crime activities are:</p> <ul style="list-style-type: none"> ▪ Drug trafficking (36 cases with 47 convictions in 2004) ▪ trafficking in human beings (24 cases with 36 convictions) ▪ Contraband smuggling (24 cases with 28 convictions) ▪ Extortion (13 cases with 15 convictions) <p>In 2004, 265 of 10083 crimes recorded in total were economic crime, most of them related to environmental safety, tax and customs evasion, counterfeiting of currency and illegal entrepreneurial activities.</p>		Trafficking in human beings, drug trafficking and economic crimes will remain the main threats in the future.
Austria	Economic crime is one of the most important fields of organised crime in Austria, in particular with regard to:	In 2003, a total of 66 organised crime cases were recorded of which 47 were investigated. Criminal groups	According to the Austrian authorities, no changes to the

130 Based on replies to the questionnaire and reports provided by member States.

131 Information based on the Report of the Prosecutor General to Parliament of Albania for 2004 and replies to the CARPO questionnaire 2005.

The organised crime situation

Member State	Organised crime activities	Organised crime groups and networks	Trends and threat assessment
	<ul style="list-style-type: none"> ▪ Money laundering ▪ Investment fraud ▪ Smuggling and counterfeiting of products ▪ Input tax fraud ▪ Corruption <p>In addition, organised theft and burglary, traffic in stolen vehicles, production and distribution of amphetamine-type substances and trafficking in human beings and money laundering are considered the main markets.</p>	<p>from different countries – and in particular from South-eastern Europe – operate in Austria. With some 700 night clubs and 3500 registered prostitutes, and an unknown number of clandestine prostitutes, the sex industry is a major market of organised crime. Women are mostly procured by foreign organisations, while employment is organised by Austrians. Russian organised crime appears not to be active in Austria, but is using the country as retreat including purchase of property.</p> <p>Corruption is encountered in the construction sector, and possibly also in the health sector and in monopolistic institutions at provincial and municipal levels.</p>	<p>situation in 2003 have been identified.</p>
Belgium	<p>In 2004, organised crime groups were involved in particular in the following areas:</p> <ul style="list-style-type: none"> ▪ 27% of groups in crime against property (including robbery, trafficking in stolen vehicles, receiving stolen goods etc). ▪ 26% in financial and economic crime (in particular customs and VAT fraud and swindling) ▪ 16% in drug production and trafficking ▪ 12% in smuggling and trafficking in human beings ▪ 11% in money laundering 	<p>In 2004, 288 organised crime groups with 2146 suspects were identified. 51% of groups had a hierarchical structure and 24% a horizontal one. 41 of the groups were "families", 21 "mafia-type", 4 cartels and triads, and 2 motorcycle gangs. 231 organisations were involved in commercial sectors, in particular import/export (16%), catering industry (9%), transport (8%), construction (7%). 177 organisations (61%) resorted to violence and intimidation within their organisation (47%), firms/individuals (16%), persons cooperating with the authorities (9%), police/investigators (9%). 80 organisations used bribery or corruption against police officers (22%), private companies/individuals (15%) and others.</p>	
Bosnia and Herzegovina ¹³²	<p>Organised crime is mostly related to economic crime, drug trafficking, trafficking in human beings and money laundering. Cases prosecuted in general and not necessarily in relation to organised crime) in 2004:</p> <ul style="list-style-type: none"> ▪ Economic crime (tax and customs evasion, fraud) 907 ▪ Drug trafficking 332 ▪ Money laundering 16 ▪ Trafficking in human beings 11 <p>The total loss to the annual budget of BiH due to organised crime is estimated at some KM 5 billion (ca. EURO 2.5 billion).</p>	<p>Most organised criminals have ties to politicians or the administration at different levels. This is particularly true for economic crime. Some organised criminals are former members of law enforcement agencies of former Yugoslavia. With regard to trafficking in human beings, BiH criminals are responsible for most operations, but in cooperation in particular with Serbs but also with criminals from Romania and Moldova.</p>	
Croatia ¹³³	<p>Economic crime, but also traditional organised crime including smuggling and trafficking in human beings,</p>	<p>19 groups with 156 persons were investigated in 2004 by the Office for Corruption and Organised Crime (USKOK)</p>	<p>Organised crime will make use of new techniques and technologies</p>

¹³² Based on replies to the CARPO questionnaire. CARPO is a regional project of the Council of Europe and the European Union aimed at strengthening police capacities against organised and serious crime in south-eastern Europe. The project includes an analysis of the organised crime situation in this region.

¹³³ Based on the replies to the Octopus questionnaire as well as the CARPO questionnaire.

Member State	Organised crime activities	Organised crime groups and networks	Trends and threat assessment
	<p>trafficking in drugs and weapons and counterfeiting of currencies are the main markets.</p> <p>In 2003, 125 organised crime-related cases involving 57 groups and 346 suspects were investigated:</p> <ul style="list-style-type: none"> ▪ 12 cases related to economic crime ▪ 77 to drug trafficking ▪ 15 to smuggling of persons ▪ 2 to trafficking in human beings ▪ 17 to contraband ▪ 2 to corruption ▪ 1 to money laundering. <p>From 19 organised crime groups investigated by the Office for Organised Crime and Corruption (USKOK) in 2004, 11 were involved in economic crimes (including fraud, forgery, counterfeiting, fraudulent bankruptcy), and the others for trafficking in human beings, kidnapping and extortion and armed robbery.</p>	with membership ranging from 5 to 30+ suspects.	The main threat from organised crime will stem from attempts to influence political and economic decisions and the public administration. The main means to this effect will be political corruption.
Cyprus	<p>No cases of organised crime have been recorded. Drug trafficking and prostitution may constitute possible markets.</p> <p>Organised crime may be related to money laundering by foreign offenders. In 2005, 175 requests for information and assistance for foreign financial intelligence units and authorities were received. 3 confiscation orders were issued and 1 person was convicted for money laundering (however not related to organised crime).</p>	<p>No organised crime groups meeting the criteria of the Council of Europe or the United Nations Convention on Organised Crime have been identified. Small groups, from the community of Greeks from the former USSR who settled in Cyprus in recent years, are involved in the distribution of drugs and burglaries and maintain a code of silence.</p>	<p>In order to prevent organised crime, an office for preventing and combating organised crime as well as an office to combat human trafficking have been established at the Police Headquarters.</p> <p>Organised crime originating from Northern Cyprus may also pose a threat.</p>
Czech Republic	<p>The main activities of organised crime include drug trafficking (2290 cases investigated in 2004), racketeering and extortion (1631), smuggling of persons (219 cases), car theft, smuggling of legal products (460 cases) counterfeiting of commercial products, including DVDs (176 cases) and a large range of fraud and other economic crimes (12437 cases)</p>	<p>Organised crime groups and networks with horizontal structures and without hierarchies as well as pyramidal, hierarchical groups operate in the Czech Republic. Groups also rely on external collaborators for specific crimes which may make up 50%. There is no significant use of violence. Corruption is used as a subsidiary activity to obtain information or to influence decision making. Investments primarily go in the grey economy itself (nightclubs, bars, casinos etc.).</p>	<p>It is unlikely that the number of organised crime will increase.</p> <p>New offences recorded in 2004 were trafficking in children and trafficking in organs.</p>
France	<p>The main fields in 2004 were:</p> <ul style="list-style-type: none"> ▪ Counterfeiting of the EURO (French authorities seized some 35% of all EUROS counterfeited in the EURO-zone in 2004). ▪ Trafficking in human beings (46 international networks dismantled in 2004) ▪ Drug trafficking (35 French and international 	<p>In the field of drug trafficking, 15 criminal networks identified consisted of French suspects, 10 were mixed (French and African traffickers) and 10 of foreigners with 70 suspects. With regard to counterfeiting of the EURO currency, 4 pyramidal organisations with Lithuanian, Bulgarian, Italian and French criminals were detected.</p> <p>Counterfeiting of industrial products is related to Chinese</p>	<p>Trends include:</p> <ul style="list-style-type: none"> ▪ Increase in drug trafficking ▪ Increase in trafficking in human beings

The organised crime situation

Member State	Organised crime activities	Organised crime groups and networks	Trends and threat assessment
	<ul style="list-style-type: none"> networks) ▪ Smuggling of persons/illegal migration often in combination with other offences (17 networks) ▪ Counterfeiting of products (with an increase of 76% of counterfeited goods seized in 2004 compared to 2003) ▪ Trafficking in cultural objects ▪ Money laundering 	<p>and Italian suspects.</p> <p>With regard to trafficking in human beings and smuggling of persons, criminals appear to be nationals from central and eastern Europe (Bulgaria, Romania, Albania) who are located and operate in different European countries.</p> <p>Violence and intimidation has been observed in drug trafficking and trafficking in human beings.</p>	
Germany	<p>In Germany in 2004, 620 organised crime groups were investigated:</p> <ul style="list-style-type: none"> ▪ 32% were related to drugs ▪ 17% to property crime ▪ 12% to economic crime ▪ 11% to smuggling of persons ▪ 9% to crime related to prostitution and nightlife ▪ 8% to tax and customs offences. ▪ 204 cases indicated money laundering activities. <p>The estimated proceeds amounted to EURO 1.3 billion.</p>	<p>The 620 organised crime groups investigated in 2004 involved a total of 11380 suspects with 109 different nationalities. 37.1% had German nationality, 8.5% were Turkish, 5.1% Polish, 5% Italian and 4.1% Lithuanian. 79.7% had members from different nationalities, that is, only 20.3% were homogeneous. 24% engaged in poly-criminal activities while 76% specialised on a particular field of crime. 84% operated internationally; 95% used commercial structures, 46% violence or intimidation, and 27% used corruption or other forms of influence on politics, media, public administration, justice or economy.</p>	<p>The situation is similar to previous years.</p>
Hungary	<p>The main organised crime markets in 2004 were:</p> <ul style="list-style-type: none"> ▪ Drug-related offences (6657 reported cases) ▪ Smuggling of persons (658) ▪ Smuggling and counterfeiting of legal commodities (1817) ▪ Facilitation of prostitution, bullying, pandering (174) ▪ Blackmail/protection racket (906) ▪ Motor-vehicle related crime (6968) ▪ Counterfeiting of money (1640) ▪ Money laundering (7) ▪ Corruption (605) <p>In total, 230 organised crime cases were investigated in 2004, most of them related to drugs (126 cases with 15 groups and 197 suspects), smuggling of persons (44/5/37), burglary and theft (34/4/61) and fraud/white collar crime (14/10/22).</p>	<p>Hungarian, Russian-speaking, Arabic and African criminal organisations are considered the most dangerous ones. 48 organisations were known in 2004. 31% had less than 10 members, and 58% between 10 and 50 members. 38 of these organisations (or 79%) had hierarchical structures. 19 organisations (40%) had relations to organisations abroad. Only 40% limited their criminal activities to the Hungarian territory; Austria (23%) and Germany (23%) were the main countries where Hungarian criminals operated abroad. 37 organisations had Hungarian leaders. Almost half of the organisations used intimidation and physical violence, and not only against other criminals or as sanctions within the organisation but also outside the criminal world. 14 organisations used influence on law enforcement agencies, 6 on the public administration and 7 on the business sector. The real estate sector was the main target for the investment of criminal proceeds (by 14 organisations), followed by night clubs and the sex industry (8 organisations).</p>	<p>Increasing seizures of ecstasy pills and cocaine, and decrease of heroin and LSD.</p> <p>Decreases in the smuggling of persons (from 10,266 cases in 2001 to 1,481 in 2003 and 658 in 2004).</p> <p>Increasing links between organised crime and economic crime, through the investment of criminal proceeds in the legal economy and the commission of economic crimes by organised crime groups.</p>
Italy	<p>Mafia-type associations are involved in different markets:</p> <ul style="list-style-type: none"> ▪ "Cosa Nostra" (Sicily): Financial and economic crime and territorial control by main families, predatory crimes through local groups. ▪ Camorra (Naples and surroundings): Drug trafficking, gambling, intermediation in labour 	<p>Mafia-type associations are organisations which resort to intimidation, "omertà", which aim at control and affect the functioning of the local economy and public administration. They include:</p> <ul style="list-style-type: none"> ▪ Costa Nostra (Sicily): Central management of finances and relations to politics and legal economic structures by big families. Major economic and 	

Member State	Organised crime activities	Organised crime groups and networks	Trends and threat assessment
	<p>world, offences and intimidation against public administration, administration of justice, persons and property. Profits through "ecomafia", control of public construction contracts and fraud related to EU finances.</p> <ul style="list-style-type: none"> ▪ 'Ndrangheta (Calabria): Drug trafficking (national and international), extortion and infiltration of public contracts (through protection money), money laundering. ▪ Mafia-type associations in Puglia (e.g. Sacra Corona Unita): trafficking in human beings, cigarettes, drugs, arms, environmental crime, extortion, control of public contracts, cybercrime ("video poker"). Intimidation and offences against public administration. 	<p>financial crimes carried out by new criminals who report directly to the leaders of the organisation. Predatory crimes (extortion, prostitution, drug trafficking) are left to local groups.</p> <ul style="list-style-type: none"> ▪ Camorra (Naples) ▪ 'Ndrangheta (Calabria): very dynamic; operates beyond Calabria, also internationally; agreements with other, foreign groups. Has been able to transform from a rural organisation to one operating internationally. ▪ Mafia-type associations in Puglia: Given the geographical location, the Mafia in Puglia cooperates closely with foreign groups, in particular from Albania and eastern Europe. <p>In addition, a range of other Mafia- and non-mafia-type organisations operates in Italy, coming from Eastern Europe, Latin America, Africa and Asia.</p>	
Lithuania	<p>The main activities of organised crime groups in 2004 were:</p> <ul style="list-style-type: none"> ▪ Extortion (72 groups involved) ▪ Car theft (64) ▪ Drugs-related offences (59) ▪ Theft (51) ▪ Robberies (44) ▪ Smuggling of goods (43) ▪ Trafficking in human beings and prostitution (33) ▪ Fraud and other economic crimes (29) 	<p>The structure of organised crime group is mostly pyramidal. 10 "higher-level" and 42 "lower-level" groups as well as 78 other groups meeting some of the criteria were identified in 2004 involving some 1754 members. Group members often know each other from serving time in prisons. Youth groups may also turn into organised crime groups or may be introduced to organised crime by leaders of other groups. Violence is used within groups and to resolve problems outside. Proceeds are invested into legal business. Lithuanian criminals are connected with groups from many other countries all over Europe.</p>	No new trends or threats have been observed since 2003.
Luxembourg	<p>The main fields of organised crime in 2004 were:</p> <ul style="list-style-type: none"> ▪ Fraud and other forms of economic crime (mentioned in 16 out of 29 cases as primary activity of the group) ▪ Drug trafficking (9 cases) ▪ Vehicle theft (2 cases) ▪ Trafficking in human beings (1 case) <p>In addition, 941 preliminary investigations were undertaken for suspicion of money laundering, including 28 for financing of terrorism.</p>	<p>29 cases of organised crime were identified in 2004 involving 857 suspects. Two groups alone comprised some 300 suspects each. 73% of the suspects were from EU countries (41% from Luxembourg and others primarily from France, Belgium and Portugal). West African citizens are strongly represented in drug trafficking.</p>	No new trends or threats have been observed since 2003.
Moldova	<p>Major crime markets include:</p> <ul style="list-style-type: none"> ▪ Economic crime (including money laundering and investment of criminal proceeds into business and property) ▪ Trafficking in human beings (29 organised crime related cases were investigated in 2004) 	<p>In the 1990s, organised crime was under the control of 6 "thieves in law" with some 116 crime groups under their authority. Recent years have seen these groups invest their proceeds into legal business and property and protect their interests through corruption. Many criminals now also conduct their activities in Moldova from abroad. 114</p>	<p>Corruption and money laundering will continue to pose serious threats and economic crime is likely to increase.</p> <p>Socio-economic conditions will continue to facilitate trafficking in</p>

The organised crime situation

Member State	Organised crime activities	Organised crime groups and networks	Trends and threat assessment
	<ul style="list-style-type: none"> ▪ Smuggling of legal goods ▪ Drug trafficking ▪ Extortion and racketeering 	organised crime groups and networks were investigated in 2004. The lack of control over Transnistria also poses particular problems with regard to organised crime.	human beings and other forms of organised crime.
Monaco	Money laundering originating from abroad appears to be the only organised crime activity in Monaco: in 2004, 15 cases were recorded of which 8 cases were investigated with drug trafficking as the predicate offence.		
Netherlands	<p>According to an analysis of 289 investigations of organised crime in 2004 involving 2143 suspects, the most common principal or supporting activities of organised criminals were:</p> <ul style="list-style-type: none"> ▪ Trafficking in hard drugs (168 investigations) ▪ Money laundering (101) ▪ Trafficking in soft drugs (53) ▪ Fraud (58 investigations) ▪ Counterfeiting and falsification (47) 	<p>Detailed data was available for 182 criminal groups. In addition to networks, "old-fashioned" pyramidal groups continue to exist. Hybrid forms combining features of networks and pyramids have emerged. 48% of suspects were of Dutch origin, followed by suspects originating from Turkey (8.5%), Surinam (7.5%, Morocco (6%) and the Antilles (5.8%).</p> <p>85 of the 182 groups made use of lawful structures or professionals. Violence is used primarily within criminal circles but also against victims of trafficking in human beings. About one quarter of the groups made use of corruptive contacts.</p>	<p>Trafficking cocaine and heroin, and the production and export of ecstasy continue to pose a threat.</p> <p>Money laundering through the internet is likely to grow in the future.</p> <p>Smuggling of people from eastern Europe as well as from China to the Netherlands in transit to the United Kingdom continues to pose risks.</p> <p>The number of victims of trafficking in human beings increased sharply in 2004.</p>
Norway	In 2004, 49 organised crime related cases with 125 groups or networks and 2160 suspects were recorded. Of these suspects, <ul style="list-style-type: none"> ▪ 1,657 were involved in drugs ▪ 492 in money laundering ▪ 143 in the smuggling of legal goods ▪ 71 in trafficking in human beings 	Most groups are organised as criminal networks which function like entrepreneurs who make use of specific expertise as necessary. Networks trafficking in drugs use violence more often than others. They include outlaw motorcycle gangs such as the Hells Angels, Outlaws MC and Banditos. The 1% members are involved in trafficking in drug, weapons and prostitution.	
Poland	The main crime markets are: <ul style="list-style-type: none"> ▪ Drug trafficking (59,356 cases investigated in 2003) ▪ Economic crime (VAT and excise fraud, credit and subvention fraud with 45350 cases) and money laundering (99 cases) ▪ Contraband (15,556 cases) ▪ Violent crimes (including extortion and racketeering with 7,349 cases) ▪ Trafficking in human beings and prostitution (44 cases) ▪ Smuggling of persons (218 suspects in 2003) 	Large groups with 40 – 80 members (most of them below 25 years of age) are involved in different offences, ranging from drug trafficking, vehicle theft, racketeering and prostitution. Smaller groups (-20 members) traffic in drugs and stolen vehicles, and often cooperate with larger groups. Groups involved in economic crime are characterised by good relations to politics and the business world. Leaders of these groups are themselves businessmen and highly qualified.	
Portugal	The main organised crime markets are: Economic and financial crime (158 suspects in 2004) Drug trafficking (16 cases with 120 suspects involving primarily cocaine, cannabis and ecstasy)	Most cases of organised crime had a transnational character with links to Italy, Austria, Netherlands, Bulgaria, Belgium, UK, Brazil, Lithuania, Dubai, South Africa, Angola and Bolivia. Although most suspects are Portuguese. For	<p>Threats confirmed in 2004 include:</p> <ul style="list-style-type: none"> ▪ Smuggling/contraband ▪ Drug trafficking ▪ Economic and financial crimes

Member State	Organised crime activities	Organised crime groups and networks	Trends and threat assessment
	Violent organised crime, including illegal immigration, trafficking in human beings and armed robbery (6 cases with 43 suspects).	example: The 16 cases of drug trafficking involved 120 suspects of which 82 were Portuguese, 8 Spanish and the remaining of a range of other nationalities. Smuggling and trafficking in human beings involved 10 Portuguese, 1 Moldovan and 1 Brazilian suspect. Violence is used within groups. Influence is sometimes used against public officials. Corruption in sports involved 19 Portuguese suspects.	<ul style="list-style-type: none"> Smuggling and trafficking in human beings <p>Increases in tax fraud (in particular VAT fraud) and fraud related to online banking are new trends. Portugal tends to become an entry point for drugs to Europe.</p>
San Marino	The level of crime in San Marino in general is rather low and has no relation to organised crime.		
Serbia and Montenegro ¹³⁴	In Serbia, economic crime (38 of 92 cases investigated in 2003), followed by smuggling and trafficking in human beings (27 cases) and drug trafficking (15 cases) are the main markets. In Montenegro, drug trafficking (32 of 81 organised crime-related cases recorded in 2003), trafficking in human beings (28 cases), economic crime (21 cases) and racketeering/extortion (16) are the main markets. Cigarette smuggling has been reduced; tax and customs fraud, fictitious companies and circuit trade cause major losses in revenues. Kosovo is a major market and source of organised crime, particularly for trafficking in human beings (82 cases related to organised crime recorded in 2003/4) drug trafficking (15 cases and 550 kg of heroin seized in 2004,) and smuggling of counterfeited products, closely followed by other forms of economic crime (including procurement fraud, excise, tax and customs fraud, and in particular corruption).	In Serbia, criminal groups are rather loose networks and not necessarily hierarchical. Ethnicity or nationality are not relevant as features. Following the murder of Prime Minister Djindjic (March 2003), 123 groups with 844 members were identified. Operation "Saber" which followed the assassination helped break the links of criminal networks in Serbia with those of Kosovo and Metohija and thus changed the structure of organised crime in Serbia. Other groups emerged. In 2004/2005 there is an estimated 62 groups with some 421 members. Violence remains a feature of organised crime in Serbia; and corruption is a key factor facilitating organised crime. In Montenegro, violence related to organised crime is not common (with exceptions), but corruption is an issue. In Kosovo, drug trafficking is facilitated by its geographical location on the "Balkan route" and the network of Kosovars who migrated to western Europe in the 1990s. Groups involved in trafficking in human beings resort to violence and have close links to countries supplying victims.	<p> Serbia:</p> <ul style="list-style-type: none"> Financial crimes involving money laundering and corruption is considered particularly harmful. Organised drug trafficking, smuggling and trafficking in human beings, and violence related to murders, extortion, kidnapping and racketeering will remain major challenges for Serbia. <p>Kosovo:</p> <ul style="list-style-type: none"> Kosovo remains a key point for many criminals in south-eastern Europe. Organised crime has an impact on security, governance, public revenues in Kosovo itself (corruption increased considerably since 2003) as well as for Europe in general, in particular through its role in drug trafficking, trafficking in human beings and the smuggling of counterfeited products.
Slovakia	The main fields are: <ul style="list-style-type: none"> Racketeering and extortion (23 cases in 2004) Smuggling of persons (15 cases) Fraud and major economic crime (14 cases) 	22 organised crime groups with 251 suspects were identified in 2004. Hierarchical as well as cell-type groups are found. Organised crime is committed in close association with legal forms of business. Some of these	Criminals are less involved in defrauding the public sector but more involved in private sector fraud. It can be anticipated that

134 Based on replies to the CARPO questionnaire 2005.

The organised crime situation

Member State	Organised crime activities	Organised crime groups and networks	Trends and threat assessment
	<ul style="list-style-type: none"> ▪ Drug trafficking (9 cases) <p>Offences in these fields are accompanied by money laundering (28 cases).</p>	<p>businesses are specifically set up as cover for organised crime and are liquidated after use. Groups may not be specialised but blend different types of offences. Some bear the features of "mafiaism" and try to penetrate the legal structures of the state and the criminal justice system. Intimidation is used against competitors in public tenders. Criminals are very skilled in financial and economic operations.</p>	<p>organised crime will:</p> <ul style="list-style-type: none"> ▪ exploit shortcomings in legislation for financial gain and investment in legal businesses ▪ increasingly attempt to infiltrate the business environment and influence society and political circles ▪ attempt to create an image of respectability and successful businessmen. <p>The protection of the common border with Ukraine to prevent smuggling of persons will require greater attention.</p>
Slovenia	<p>The main activities of organised crime groups and networks in 2004 were:</p> <ul style="list-style-type: none"> ▪ Drug trafficking (92 organised crime-related cases) ▪ Illegal border crossing (102 cases) ▪ Weapons and explosive (4 cases) ▪ Blackmailing, explosions and violent crimes (6 cases) ▪ Money counterfeiting 	<p>Most criminal groups were loose networks, some led by Slovenians and others by national from other former Yugoslav countries. Links with groups from other countries of former Yugoslavia are increasing. Intimidation (but not necessarily open violence) are used to enforce discipline within groups. Corruption is reportedly used at local levels in connection with illegal migration. Organised criminals also attempt to influence the criminal justice system in connection with prosecution and trials.</p> <p>Almost all groups are involved in legal businesses to shield their criminal activities.</p>	<p>Drug trafficking has increased when compared to previous years. Given the geographical location of Slovenia, drug trafficking will continue to pose a problem.</p> <p>The same is true for the forgery of the EURO currency.</p> <p>It is not expected that organised crime will significantly influence Slovenian society in the near future.</p>
Spain	<p>Organised crime groups and suspects identified in 2004 were involved in the following markets:</p> <ul style="list-style-type: none"> ▪ Drug trafficking (253 groups/5,941 suspects) ▪ Trafficking in human beings (71/1,694) ▪ Smuggling of persons (41/685) ▪ Fraud and serious economic crime (64/1,210) ▪ Money laundering (134/3,221) 	<p>494 groups with 9,523 members were identified in 2004. Next to a few larger mafia-type groups with corruptive power, most groups are small, flexible and form a network of independent cells. They make use of professionals such as lawyers and accountants and exploit information technologies for secure communication. 142 (29%) of the groups used violence and intimidation, of which 34 groups within their group, 49 between groups and 109 outside criminal groups. 24 groups (< 5%) used corruption or trading in influence. 282 groups operated internationally.</p>	
Sweden	<p>Economic crime – 70% of which are tax fraud and accounting offences – is the main market (4,145 cases were reported to the Economic Crimes Bureau in 2004) and particularly related to organised crime when involving black labour. Drug trafficking but also the smuggling of alcohol and tobacco remain important. Trafficking in human beings has gained in importance in different parts of Sweden. Extortion and protection rackets (and the violence associated with such crimes)</p>	<p>Different types of organised crime groups, networks and gangs are found in Sweden, some of them specialising in the smuggling and trafficking in goods or economic crimes – such as VAT fraud in the food industry or the procurement of black labour – or the trafficking in human beings. Other groups, networks or gangs – many of them based on ethnicity – are less specialised and more multi-criminal. Outlaw motorcycle gangs are considered a criminal "environment" consisting of gangs such as Hells</p>	<p>An increasing number of groups and networks are multi-criminal</p> <p>Prison gangs and outlawed motorcycle gangs and their supporters become increasingly violent against law enforcement officers.</p> <p>Trafficking in human beings is increasing and spreading all over</p>

Member State	Organised crime activities	Organised crime groups and networks	Trends and threat assessment
	and committed in particular by prison gangs and outlaw motorcycle gangs are considered threats to society.	Angels MC Sweden, Bandidos MC Sweden and Outlaws MC Sweden. In addition, a considerable number of sub-urban and youth gangs are found in major cities. While the use violence used by groups, networks and gangs is increasing, the use of corruption appears to be limited (with some cases reported in relation to the prison service).	Sweden.
Switzerland	In 2004, most cases were related to fraud (1301 convictions – although not necessarily all organised crime), drugs offences (652 convictions in serious cases), extortion and racketeering (79 convictions), smuggling of persons (48 convictions) and trafficking in human beings (7 convictions). In addition there were 117 convictions for money laundering. The damage of economic crime is estimated at 1.4-5.5 billion Swiss Francs.	3 types of groups have been identified: <ul style="list-style-type: none"> ▪ Networks of contacts which are exploited for criminal purposes ▪ Networks of criminals of medium size and a hierarchy of family/clan-type ▪ Criminal organisation with clear hierarchies. Groups include "outlaw motorcycle gangs" (OMG), Italian groups (including also the "Stidda"), and different groups from south-eastern Europe (in particular from Albania), the former Soviet Union and west Africa. Common to all types is that they maintain relationships to foreign countries. 	<ul style="list-style-type: none"> ▪ Associations may use their infrastructure for criminal offences (example of OMG). ▪ The 'Ndrangheta is active in Switzerland in the field of economic crime and risks to infiltrate the legal economy. ▪ Groups from south-eastern Europe (in particular Albanian) may take over the management in different fields of crime and franchise operations to other criminals. ▪ Criminals from Russia and the former Soviet Union are becoming more active in economic crime in Switzerland. ▪ While economic crime is the principal field of crime, it does not constitute a threat to the security and the legal economy of Switzerland.
'the former Yugoslav Republic of Macedonia' ¹³⁵	In 2004, the majority of organised crime cases recorded involved counterfeiting money (122 from 217 cases recorded), followed by drug trafficking (19 cases), trafficking in human beings (19 cases), smuggling of goods (14 cases), and corruption (31 cases).	The recorded number of criminal organisations in 2003 was 47 with 59 organised crime-related cases and 158 suspects. Groups tend to be ethnically homogeneous and operate internationally. Groups involved in drug trafficking, illegal migration and trafficking in human beings may also have foreign leaders. Violence is used in connection with extortion rackets as well as against victims of trafficking in human beings. Corruption is a major problem as shown in the course of an increasing number of investigations in 2003 and 2004.	An increasing number of cases are related to public funds or functions or agencies, such as health insurance fund, electricity distribution. Criminal acts thus cause significant damage and loss to the state budget. In fact, in most cases the state is the victim
Turkey	The largest markets of organised crime in Turkey investigated in 2004 were fraud and other economic crime (30394 cases reported with 55457 suspects), racketeering and extortion (4884 cases/8985		

¹³⁵ Based on replies to CARPO questionnaire.

The organised crime situation

Member State	Organised crime activities	Organised crime groups and networks	Trends and threat assessment
	suspects), drug trafficking (3,377 cases/7536 suspects), smuggling of persons (1,312 cases/7,536 suspects), counterfeiting of products (767 cases/1,280 suspects) and trafficking in human beings (188 cases/674 suspects)		
Ukraine	<p>The main market appears to be economic crimes. From 721 organised criminal groups identified in 2004:</p> <ul style="list-style-type: none"> ▪ 458 groups were engaged in different criminal activities (including 114 groups involved in drug trafficking, 22 in trafficking in human beings) ▪ 263 in economic crimes ▪ 35 in crimes related to the financial system ▪ 36 in crimes related to the fuel-energetic complex ▪ 35 in crimes related to the agrarian-industrial complex ▪ 15 in crimes related to the metallurgy industry. 	<p>721 groups with 2,972 suspects were detected in 2004. In 423 cases before court, the criteria of organised crime were confirmed. With regard to violence and intimidation, 37 groups were involved in banditry, 14 groups in murder, 13 groups in robbery, 15 groups in extortion. 9 groups used bribery, 23 were engaged in money laundering.</p>	<p>An increasing number of organised crime cases are revealed and brought before court. The trend observed in 2003 continues: violent crimes are decreasing while the number of economic crimes, money laundering, trafficking in human beings and drug trafficking is increasing.</p>
United Kingdom	<p>The main threats are:</p> <ul style="list-style-type: none"> ▪ Class A drugs trafficking ("hard drugs") ▪ Organised immigration crime ▪ Fraud ▪ Money laundering ▪ Firearms ▪ Hi-tech crime ▪ Sex offences against children ▪ Child abuse 	<p>Most "groups" are rather loose networks which coalesce around one or more prominent criminals for particular criminal ventures. Many groups are involved in cross-sector activities, mostly drug trafficking plus one or more other activities. Money laundering and coercion are the most widely used supporting activity. One quarter of groups is believed to use corruption. The criminal use of information and communication technologies is gaining in importance.</p>	<p>While drug trafficking, immigration crime and fraud will remain important, cybercrime/high-tech crime offers a large potential to criminals.</p>

3 Economic crime in Europe – a convergence story?¹³⁶

3.1 INTRODUCTION

Considering Council of Europe countries as a whole, today we are learning more about economic crime, and for good reason. This learning is stimulated by the acceleration of economic globalisation, rising (though uneven) prosperity, the opening up of the former communist European states, improving business governance, risk management and monitoring systems, and better cooperation across the public-private interface and also across national borders. Better government and cooperation means that more economic crime cases are being recognised as such and analysed. On that basis, we have better information, about more cases.

Some big unknowns are whether those same global and regional forces are currently resulting in continuing increases, a levelling off or even decreases in underlying frequencies of economic crime – or in the seriousness of its impacts on society, enterprise, government and individuals. There may be expected to be some regional and national specifics, and even contradictory trends, so generalisations are hazardous. On the one hand, in parts of western Europe, the recent explosion of interest in economic crime and the greater priority being given to its prevention, detection and sometimes prosecution may actually be shrinking the so-called dark figure of such crimes. In this sense, a rise in recorded economic crime rates can represent social progress (in morality and willingness to act) rather than social decay. On the other hand, transformation of the former communist European states since the 1980s has multiplied some of the opportunities for economic crime in Europe.

These global, regional and national trends have affected both (a) the rates of economic crime against European victims – corporate, governmental and individual – and (b) the opportunities for European offenders against victims, whether European or not. This distinction is an important one because unlike other predatory crimes¹³⁷, economic crime victims can be geographically distant from the offenders, even where they are not victims of predatory cybercrimes such as phishing and pharming: bankruptcy frauds against foreign trade creditors and investors long preceded the invention of the internet or even the telephone. Until the 21st century, Nigerian “419” frauds used letters rather than the internet.

In the former communist European states, the “local” opportunities for crime are related to privatisation, export of raw materials, and emerging financial and banking sectors, accompanied by capital flight, tax evasion, bankruptcy fraud, corruption, and the laundering of these proceeds. However, the freeing of controls over physical

¹³⁶ This chapter has been written by Professor Michael Levi of Cardiff University, Dr. Nicholas Dorn (Cardiff University) and Professor Leonid Fituni (Centre for Strategic and Global Studies, Moscow).

¹³⁷ It can be helpful to distinguish between (a) predatory crimes, in which there is a zero sum game involving offender(s) and victim(s), either of whom loses, and (b) market offences, in which criminals supply commodities to willing buyers but where the supplies are wholly illegal (e.g. drugs) or are legal but tax evaded commodities (tobacco, or alcohol/ prostitutes in countries where alcohol and prostitution are legal). See further R. T. Naylor (2003) ‘Towards a General Theory of Profit-Driven Crimes’, British Journal of Criminology, 43(1) pp.81-101; M. Levi (2002) ‘The organisation of serious crimes for gain’, in M. Maguire et al. The Oxford Handbook of Criminology, Oxford.

movement and on electronic access has permitted a flow of frauds by citizens (and their diasporas overseas) against international targets, for example in ordering electronic equipment such as computers on credit from the West, using electronically copied credit cards. In addition to laundering the proceeds of crimes committed both in Western Europe and elsewhere, fewer privatisation-related scandals occurred in Western Europe because that stage of development has already been past¹³⁸.

However, following the multi-billion Euro financial fraud and misconduct schemes such as Enron, WorldCom, and Tyco International which – though based in the US – had an impact on European investors and consumers, the Parmalat scandal at the end of 2003 showed that supervisory failures and economic crimes of vast magnitude are also possible in Western Europe. They also demonstrated the importance of avoiding a frame of mind in which one looks only towards the organised crime *underworld* as the source of serious economic crime threats. Much serious economic crime arises within legitimate spheres of industry, commerce and politics. The use of the term “harm” or rather its plural “harms” is more appropriate here than the conventional “threats”, because harms(s) calls attention to the actual, concrete consequences for victims, individually and collectively (“us”). “Threat” is a fine word to evoke external, attacking forces (“them”) but less helpful in thinking more precisely about the consequences as experienced by specific victims.

Although the costs of crime can be denominated simply in money terms, we do not treat them solely in this way. Rather we include – as with all crimes – the degree of emotional upset to victims and the risk to the fabric of society. Properly understood, this means that we have to look not just at the financial numbers but at the capacity of the victims to absorb losses. The degree of emotional impact of fraud is variable, even within the business sector¹³⁹, but trust is the glue that holds business and social life together and although social life *can* exist without trust, distrust hampers economic and moral development and can lead the wronged parties to resort excessively either to formal law or (especially if they have no confidence in formal law) to organised criminals to manage conflicts. Yet at the same time, there is a certain ambivalence in the way that contemporary society views economic criminals, nicely captured in the Italian word *furbo*, which implies a cultural respect for cunning and wiliness in avoiding controls.

3.2 THE CONCEPT OF ECONOMIC CRIME

While the few serious studies that have been conducted suggest that economic crime costs are significantly higher than all other forms of crime (including drugs), a clear and widely agreed upon definition is lacking. In 1981, the Council of Europe adopted a Recommendation on Economic Crime¹⁴⁰ listing 16 specific and non-specific offences which are considered economic crimes. These include different types of fraud, cartel offences, fiscal offences, offences related to currency regulations, bogus firms, stock exchange and bank offences, unfair competition and others. The Recommendation is

138 There have been many criticisms of British privatisations in the Thatcher era - especially the rail system - but no-one has alleged that these were fraudulent in the legal sense of obtaining a dishonest profit at the public expense.

139 See Fraud Advisory Panel (2005): The Impact of Fraud. London. ; M. Levi (1992) “White-collar crime victimization”. White-Collar Crime Reconsidered. ; M. Levi and A. Pithouse (forthcoming) White-Collar Crime and its Victims. Oxford.

140 Recommendation R(81)12 on Economic Crime, adopted by the Committee of Ministers on 25 June 1981.

based on the assumption that in aggregate, economic crime has adverse impact beyond individual victims and the material damage in that:

- it affects a large number of persons, society and the state in general,
- it damages the functioning of the national or international economy, and
- it causes a loss of trust and confidence in the economic system.

However, European countries continue to use different definitions or enumerate different types of crimes as economic crimes. In common law systems such as the UK and Ireland, for example, many economic crimes (including tax) are prosecuted under the laws of deception and there is no satisfactory sub-classification in the crime statistics at all. Within civil law systems, some "economic crimes" are treated under administrative law and technically, they may not be "crimes" at all: if evidential rules and standards of proof differ, it may be hard to tell whether or not they *could* have led to conviction in a criminal court. In some member states such as Italy, prosecutions may fail in the final instance because statutes of limitations rule them "out of time"¹⁴¹: but does this mean that the acts or series of acts were not crimes and cannot properly be so classified even if the "offenders" can escape legal punishment? Conversely, Italy (like other EU member states) will implement the Market Abuse Directive that *inter alia* requires the criminalisation of insider trading, thereby potentially adding new offences that were not crimes before¹⁴². This has been a particularly common phenomenon in the criminalisation of money laundering in central and eastern Europe, though prosecutions are not common yet. Comparisons are therefore difficult.

Even amongst the minority of transgressions that are reported or identified independently, many may not appear in police and criminal justice statistics: unlike "normal" crimes in which when reported, criminal justice is the principal response, regulators favour giving guidance and quiet advice, possibly backed up by administrative or civil actions, with prosecutions as a last resort¹⁴³. Furthermore, *de facto* resources available for economic crimes are lower because law enforcement agencies place stronger emphasis on offenders and fields which are more likely to cause a high level of external visible harm, while auditors and private security focus on reducing risks which are internal to a business or institution. It may be impossible to know whether an increase in the number of economic crimes recorded is a reflection of actual increases in crime or of increased attention by law enforcement, regulators and others to this particular problem. Thus the widening of money-laundering reporting obligations provoked greater reporting of frauds and tax evasion by financial institutions and professionals – especially in the UK when in 2004, many thousands of small cases of non-declaration of income were reported by lawyers because in the course of divorce cases, they learned about them from their clients and were obliged to

141 A particular difficulty where a reduction in penalties – for example for false accounting – reduces the time available before the statute of limitations expires.

142 The extent to which this adds to the official crime statistics, however, depends on the resources and methodologies of policing and whether it is considered appropriate to take official action.

143 The danger is that, in using the criminal law to send a clear message, economic damage may possibly be done that exceed the damage caused by the criminal actions: the collapse of Arthur Andersen, convicted of destroying evidence in the Enron affair (though the Supreme Court quashed the conviction in 2005), resulting in the big five global auditing firms becoming only four, illustrates this possible outcome. On the other hand, if criminal prosecutions are never brought, and if in addition administrative or civil actions are so delicately applied that miscreants are seen to "get away with it", then controls become completely ineffective and the public also may come to believe that the rich can act with impunity.

report. But this trend in economic crime investigations (more by non-police than by police agencies) may not reflect increased fraud; rather, a change in the rules.

A particular difficulty for the preparation of an *annual* situation report is that frauds vary greatly in how long they last *and* in how quickly they come to light after they are committed. Thus because they are noticed quite quickly by the crime victims, frauds from lost and stolen cards (falling in Europe, due to the introduction of Chip and Personal Identification Number cards) take less time to discover than "cloned" cards and those used for internet transactions (rising in Europe), where the victim may find out only when the bill arrives; and all these payment card frauds are noticed earlier than complex accounting frauds such as Parmalat. So working out what happened "in" 2004 is hard to deduce from what was dealt with in that year, whether by the police, regulators or the courts (whether through criminal, administrative or civil action or a combination of some of those) or "internally by business itself (for example by dismissals, staff discipline, warnings and/or the introduction of new systems).

3.3 CORPORATE VILLAINS AND VICTIMS: VIEWS FROM WITHIN BUSINESSES, WESTERN AND EASTERN

Political, business and cultural environments are not developing entirely evenly across all of the Council of Europe countries. This has implications for patterns of awareness about and knowledge of serious economic crimes. Not only does crime itself vary from one region to another, so do available systems, data and perspectives on its nature, extent and impacts.

There are signs, especially in Europe and North America, that recent public and political reactions to business scandals have stimulated at least the larger and more publicity-sensitive firms into putting in place enhanced crime/fraud risk management systems. (Some evidence for this is discussed below.) The background is that corporate governance is no longer a concern only for the private sector but also for public policy and public opinion. As a result, the private sector is in a process of reform, eager to show that it can monitor, control, minimise and learn from its own economic crime problems and vulnerabilities.

One result of tightened-up procedures – within commercial enterprises, also sometimes involving security consultants, bolstered by greater activism amongst regulatory and anti-fraud law enforcement agencies – is *identification of more cases of economic crime*. What was previously largely invisible is being made increasingly visible, by higher levels of corporate concern, better monitoring and risk management. In other words, the ratio between numbers of serious economic crimes actually committed, on the one hand, and those discovered by enterprises, regulators and/or law enforcement agencies, one the other hand, is moving towards parity (although we still have a very long way to go before all crimes are detected). At least that seems to be the case in more developed and established market economies.

However, in the difficult situations following privatisation of state economies in eastern Europe, whilst serious frauds and their economic crime may have blossomed, monitoring and reporting systems have remained comparatively weak. The increase in serious economic crime may have been more rapid than the capability and/or willingness of corporate bodies or state agencies to discover or report such crimes. As for the above-mentioned actual/detected crime ratio, the possibilities include that this ratio is somewhat static or that it is moving away from parity. The following pages explore these possibilities within some specific contexts.

3.4 FOR WESTERN EUROPE: LET THERE BE LIGHT

As the 2005 economic crime survey by PWC for Switzerland puts it:

While there may have been an increase in the number of frauds perpetrated, we conclude that the reported increase is most likely attributable to other variables, namely

- greater management awareness and understanding of the effect that fraud has on the workplace and a corresponding greater openness to report fraud incidences
- an increase in regulations within certain industries and increased regulatory supervision, together with
- a general refocus on, and strengthening of, internal control systems, leading to increased detection rates.¹⁴⁴

Thus one plausible hypothesis about trends in economic crime within the corporate sector in Europe could be that increases in awareness of such crimes are driving increases in awareness, better crime/fraud detection systems and also (within constraints to be discussed below), more reporting. Internationally, business is recognising more of the corporate crime/fraud that occurs.

This report indicates that, globally, whilst companies in 2005 reported more frauds than they did in 2003, however they believed that the prevalence of fraud (i.e., including undiscovered and unreported instances) was lower in 2005 than in 2003.¹⁴⁵

Why might that be? Possibly because of the increasing importance, in the international context, of a tightening up, in order (a) to protect corporate reputations and, (b) to protect the very large and potentially vulnerable money streams characteristic of modern firms, particularly in the internationally booming financial sector. As PWC speculate:

In previous years, we explored the concept – reflected in the survey results – that “regulated” industries reported more incidents of fraud as their procedures and systems required greater levels of transparency. The financial services sector, for example, has always dominated the top position in our surveys for the number of frauds reported. Their high level of (near) cash assets and complex financial transactions make this sector an obvious target for fraudsters. But the often-sophisticated risk management systems that financial services firms have in place also increase the likelihood that they will have greater success in detecting incidents of fraud. However, the results of our 2005 survey indicate that “unregulated” industries are showing equal levels of success in uncovering economic crimes.¹⁴⁶

One of the factors holding back further success against serious corporate crime/fraud is the involvement of senior managers.

While fraud is perpetrated by all levels of staff within businesses, what is perhaps startling is the extent to which our survey showed members of senior management – the figureheads within a business – are incriminated in frauds: Overall, they are responsible for 23% of reported frauds and, in smaller companies, they committed 35% of the frauds reported. [...] However, because of their position within the business, they had had the

144 PriceWaterhouseCoopers (2005): Economic Crime Survey 2005 Switzerland, PriceWaterhouseCoopers, November 29, p 1 of pp 12,

http://www.pwcglobal.com/gx/eng/cfr/gecs/PwC_GECS05_Switzerland.pdf

145 PriceWaterhouseCoopers, 2005, Economic Crime Survey 2005 [global report],

PriceWaterhouseCoopers, November 29, p 2 of pp 36,

http://www.pwcglobal.com/gx/eng/cfr/gecs/PwC_2005_global_crimesurvey.pdf

146 PriceWaterhouseCoopers (2005: 6-7).

opportunity to use their management authority to override controls designed to detect fraud.

And:

It is little wonder that the financial and “collateral damage” from fraud increases the higher up the company ladder a perpetrator operates. Respondents perceived the impact from fraud perpetrated by senior management to be up to three times more serious than the impact from fraud committed by lower level employees. Furthermore, the type of intangible damage inflicted largely depends on the perpetrator’s position. The higher the status of an internal perpetrator, the more frequently companies report a loss of reputation (up to 43%) and impairment of business relationships (up to 50%). [Nevertheless] Fraudsters within senior management were reported not only to have been dismissed less frequently than other grades of staff, but also to have been subject to criminal charges less frequently.¹⁴⁷

In summary, serious corporate and economic crime problems in western Europe sometimes involve high status offenders and can cause widespread harm; the frequency of economic crime may be being contained (for example by picking up frauds before they get as big as they would have done before), rather than increasing, although we cannot be certain of this; and due to increasing acceptance of the ideals of corporate governance and risk management, a higher proportion of frauds experienced may be being reported in self-report surveys. However the situation is not the same everywhere.

3.5 FOR EASTERN EUROPE: RUSSIA – BRIEF CASE STUDY

Serious economic crime in Russia – and the questions of how much of its is being detected and reported, and what the harms are and where they fall – needs to be understood in the wider canvass of developments in that country.

Russia's industrial transformation runs counter to prevailing ideas about enterprises after communism. Many thought big Soviet industrial enterprises so hopeless that they were best abandoned, as widely occurred in central Europe. Russia's mass privatisation was condemned as an economic disaster. Instead, it was thought that the new economy should be based on small businesses, as in Poland. But Russia has put all this conventional wisdom into question.

A score of large business groups are quickly transforming its heavy industry and they are all led by Russian citizens, mostly engineers in their thirties but of mixed backgrounds. The names of the business groups are often international: Alfa, Basic Element, Interros, Severstal, Sibneft, Sistema, Unitrans, Wimm-Bill-Dann, and – with the highest profile in 2004 and 2005 -Yukos. Privatisation is the root cause of Russia's enterprise restructuring. Whereas only 10 years ago Russia's industry was fully state-owned, today 90% of it is privatised and 61% of the companies have one controlling shareholder group. These enterprise groups are usually conglomerates, with oil or metals assets generating cash, which they ploughed into manufacturing companies bought at fire sale prices, many of them after the Russian financial crash of 1998. Although each group owns banks, these play a small role. The new owners usually see themselves as private equity investors, aiming to fix the companies up and sell them at a profit.

147 Ibid pp 17& 25.

So far, Russians have dominated big enterprise restructuring for many reasons. They know how to deal with regional governors and social commitments and can dismiss four-fifths of the labour force when necessary. They also understand how old Soviet enterprises work and know how to uproot age-old criminality in them, while utilising valuable technology.

These new owners are obviously not saints. They invariably fought a ruthless battle to gain control of their companies, often trampling on property rights and preferring to see the government weak, but ownership has changed their incentives. In recent years they have backed radical tax reform and judicial reforms. They are thus on a trajectory, from appropriation of assets on an "anything goes", "robber baron" basis, to an alliance with state agencies and in some cases with international businesses in order to stabilise and legitimise their ownership claims and social positions. This involves greater attention to legalities.

In this context, there is a possibility for Russian private businesses to move towards a more western model of corporate governance, risk management, monitoring for economic and other corporate crime risks, and improved levels of reporting of economic crime, whether coming from within corporations (corruption, private use or diversion of companies' assets) or from the external environment (theft, protection, etc).

However, whilst there might be such a movement, the Russian business environment, culture, governance, culture and systems are still rather specific. Additionally, there is something of a time lag between business reforms and improved crime detection and reporting. Hence, currently available corporate/ economic crime information still reflects the situation of a few years ago:

1. High level of latency of economic crime. This is partly a result of under-reporting and with a result of attempts to suppress information on offences. Such attempts are made not only by those who commit the offences but also by accomplices within the law enforcement, administration and political bureaucracy. The level of latency (interpreted as the number of investigated/registered cases as a proportion of the total number of unreported/unregistered criminal cases) continues to increase or, at least, does not decrease. The share of solved criminal cases or "detectability" of offences in general does not grow.¹⁴⁸
2. Rapid sophistication of economic crime. Primitive criminality and traditional violent crime is being overtaken and substituted by "refined", and "intellectual" types of crime. Criminals quickly adjust to new kinds, forms and methods of business activity. They actively use new market tools, including information technologies, for criminal purposes. The incidence of offences committed in the sphere of high technology and/or modern business technologies grows (plastic card replication, computer crime and fraud, internet crime, criminality in sphere of mobile communication). Lately, Russia has witnessed numerous examples of large-scale misappropriations of financial funds and other assets, through the use of fraudulent bank documents, falsification of financial instruments, criminal use of electronic vehicles of access to bank accounts and criminal use of office equipment (computers, faxes, modems, copying).
3. Active participation of organized criminal groups in committing crimes. Crimes committed with the participation of organized criminal groups are characterized

¹⁴⁸ Luneev V.V. Prestupnost XX veka. Moscow 1997 p. 137

by more efficient preparation, diversion and concealment of misappropriated property and funds. Organised criminal groups search for new sources of acquiring, new ways of merchandising their proceeds and new possibilities for expanding criminal activity.

4. Merger of economic and traditional violent crime. "New" market competition often occurs hand-in-hand with "traditional" use of violence for achieving business goals. Compared with the unruly times of Mr Yeltsin's presidency, instances in the period 2000-2005 of arson, criminal explosions, assassinations of business people and employees from competing organizations, law-enforcement officers and officials from other state bodies as means of the competitive struggle has significantly decreased. Nevertheless, and in sharp contrast with the situation in Western Europe and G7 countries, cases are perceived by the society more or less as a business routine rather than anything exceptional. The inefficiency of the judiciary stimulates the use of violence for solving business disputes and/or debt recovery.

As for the future, after initial consolidation and restructuring, some observers see Russian industry as being on the verge of a further big change. While the first steps to gain productivity have required specific Russian skills, Russian businesspeople understand that the future calls for foreign technologies and skills. Some are bringing in managerial and technical expertise, and others are selling their companies to foreign bidders. Many will end up doing both.

On that basis, forms of governance, business systems, risk management, internal detection of economic crime and cooperation between businesses, regulators and law enforcement agencies might in future more closely approach the European and wider international model. That could mean (a) better detection and reporting, (b) better preventive systems and, possibly, (c) less serious economic crime and so less harm. This is the converse of the more populist forecast that Russian and other "eastern" economic criminals will threaten and overwhelm the west. In truth, no-one yet knows, because convergence is not necessarily an even or predictable process. We return briefly to this point in the conclusion.

3.6 TECHNOLOGY-ASSISTED ECONOMIC CRIME IN EVERYDAY LIFE

Not all involvements in economic crime are large-scale or "professional crime" or "corporate crime". Many of the modern forms of economic crime – card crime, other frauds, computer crime are put in motion by amateurs and part-time, even casual law-breakers, sometimes quite young people. We know a great deal about patterns of victimisation, thanks to data on payment card fraud. In general this shows that Card Not Present frauds are on the rise while the traditional kinds of fraud using lost and stolen cards and even counterfeits are in decline, due to the introduction throughout Europe of Chip and Personal Identification Number requirements. In 2004, though cards issued in the UK (as usual) easily topped the total fraud losses (with well over half the European total), plastic fraud losses per card issued ranged from Norway at the bottom end to Switzerland at the top end of the spectrum, with 9 times Norway's fraud rate. Fraud losses rose 14% in the EU countries, compared with 24% in Europe as a whole. In terms of which countries the frauds were committed in, the highest rate countries were (in descending order) Turkey, Spain, Italy and France, showing the importance of cross-border issues to fraud risks.

We do know something about plastic fraud gangs, with Romanians playing a major role in frauds at Automated Teller Machines, where gangs in several European

countries seem to have developed skills and technology in placing false fronts on ATMs, concealed cameras to record the PINs, and then the ability to use the cards thereafter. However, that is only a small part of the picture. Dishonest merchants seem increasingly to be set up to obtain card numbers that they then process through their systems with false transactions; and individuals (and groups) obtain employment in legitimate firms (as, for example, fuel attendants), where they copy card data and send it electronically though to their collaborators at home and overseas, including the Tamil Tigers in Sri Lanka.

However, more generically, who the fraudsters and cybercriminals are is one of the untold stories of economic crime. Actually they are generally remarkably like their victims, survey evidence suggests. The 2002-2003 British Crime Survey (BCS) and the 2003 Offending, Crime and Justice Survey (OCJS) are the first large-scale, national surveys to examine fraud and technology crime in a general population context – that of England and Wales. It would be dangerous to assume that other countries have profiles just like this, but equally, there is no particular reason to think that they are radically different, especially as regards the disproportionate involvement of young people in cybercrimes. We caution that unlike most other crimes increasing age does not necessarily make fraud harder – if anything, in relation to face-to-face crimes, people look more credible as they “mature”.

These surveys look at levels of credit/bank card fraud and its harmful impacts (social as well financial); other types of frauds, including income tax and benefit fraud, falsified work expenses and insurance fraud; and some of the frauds involving high technology, in particular computer viruses and “hacking”. This selection was influenced by the expected higher rates of offending (compared with, say, embezzlement by finance directors) within a general population sample and by the need in the context of the survey to focus only on crimes against and/or by individuals. The BCS covers incidents experienced by adults aged 16 and over, while the OCJS covers offending by those aged from 10 to 65. What follows are lightly edited extracts from the executive summary of the UK Home Office’s conjoint report on these two surveys.¹⁴⁹

PLASTIC CARD FRAUD AND WORRIES ABOUT IT

Who gets hurt? As of 2002-2003, 32.8% of BCS respondents, (3.6% of card users) were the victims of card fraud in the 12 months prior to interview. Levels of worry are higher with a half (48%) of card users worried about someone else using their card. Women were slightly more concerned than men. However men were more likely than women to have suffered such a crime. Those who had been a victim in the last 12 months were significantly more likely to be very or fairly worried about being victimised than those users who had not been (68% and 47% respectively). It appears that victimisation may well serve to increase levels of anxiety, perhaps by exposing victims to the potential consequences of the crime. Card users aged 66 and over were the least likely to have been a victim of this type of crime, compared to those aged from 26 to 39 and from 40 to 65. Asian and Black respondents were significantly more likely to have been victimised than White respondents, which contrasts with the card usage pattern among these groups but is reflected in their comparative worry levels about

149 Allen, J./ Forrest, S./ Levi, M./ Roy, H. / Sutton, M. (2005): Fraud and Technology Crimes: findings from the 2002/03 British Crime Survey and 2003 Offending, Crime and Justice Survey. London.

<http://www.homeoffice.gov.uk/rds/pdfs05/rdsolr3405.pdf>

crime in general. Victimization was more prevalent among those living in affluent urban areas, with a high household income and in higher social classes.

Who is responsible? 1.0% of OCJS respondents aged from 18 to 65 admitted using someone else's payment card without the owner's permission in the last 12 months. This level of offending is lower than the victimisation rate, because one offender could have impacted on multiple victims. 18 to 25 year olds were more likely than other age groups to commit card fraud. Those with no qualifications, living in a municipally owned housing area or an area with a relatively high level of physical disorder were also more likely to admit having committed card fraud.

Those OCJS respondents who said they used someone else's card without the owner's permission were asked if they had obtained the card details via the Internet in the last 12 months and whether they had used someone else's card details, without permission, to purchase something via the Internet. One per cent of respondents aged from 18 to 65 admitted to any type of card fraud in the survey. Of these only four said they obtained card details via the Internet and only three had bought goods/services over the Internet. Levels of Internet card fraud are therefore low compared with other forms of card fraud.

OTHER TYPES OF FRAUD

Of those respondents in employment, the OCJS found that falsified work expenses was the most commonly committed type of economic crime among those about which they enquired: 6.7% of 18- to 65-year-olds who had opportunity to claim work expenses saying that they had committed it. Insurance fraud was second (5.1% committing) and income tax and benefit frauds were the lowest, committed by under two per cent (1.9% and 1.8% respectively). By themselves, these data tell us nothing about the financial scale of offending.

COMPUTER VIRUSES AND HACKING

A significant minority of the UK population having access to the internet at home have been adversely affected by a virus, unauthorised access to their computer, or distressing emails. 18.2% of BCS households where the respondent used the Internet at home reported that their home computer had been affected by a computer virus in the last 12 months. Of those who had experienced a virus, just over a third (36%) said they had reported this to someone. 12% had reported the incident to an Internet service provider, and 7% to a systems administrator. Less than one per cent reported it to the police. 2.2% of BCS respondents said someone had accessed or hacked into files on their computer in the last 12 months. None of these victims reported this to the police. 12% of BCS respondents said they had received an email message which they considered to be offensive or harassing in the 12 months prior to interview.

According to the OCJS, just less than one per cent (0.9%) of respondents aged from 10 to 65 who used the Internet had knowingly sent a computer virus in the last 12 months. However a single offender can impact upon multiple victims. Men were more likely than females to admit to this type of activity (1.2% compared with 0.6%), and 10- to 15-year-olds were the most likely age group to say they had sent a virus (3.0%). Just under one per cent (0.9%) of Internet users said they had used the Internet to hack into other computers; 1.3% of males said they had done this, compared with 0.5% of females. Respondents under the age of 26 were the most likely to admit to this activity (2.2% 10- to 15-year-olds; 2.0% 16-to 25-year-olds; 0.3% 26- to 65-year-olds). Younger respondents

aged from 10 to 15 and from 16 to 25 were more likely than other age ranges to say they had sent harassing emails.

COPYRIGHT THEFT AND OTHER FORMS OF CRIME

15.1% of the OCJS respondents said they had downloaded software or music that they knew was pirated or otherwise unauthorised. Similar to all other technology offences, males were more likely than females to commit copyright theft. Copyright theft was particularly prevalent among younger respondents (aged 25 or below). Less than one percent (0.7%) of the OCJS respondents aged from 18 to 65 who had used the Internet had visited a racist website.

For those aged from 10 to 65, 1.9% had visited a website on how to commit a crime. Males were more likely than females to say they had visited these websites and young adults were more likely than other age groups to have visited these sites. Links to mainstream offending: those who had committed a technology offence were significantly more likely to have committed mainstream offences than others. Unlike fraudulent offending, those who admitted to having committed technology related offences were more likely to have been involved with violent than with theft offences.

3.7 HARMS CAUSED BY ECONOMIC CRIMES

It is important to try to develop an analytical perspective within which one might locate different forms of economic criminality, in terms of the interests affected: what sectors of the business, government and general public are harmed and what sectors benefit from crimes, on a spectrum from "organised criminals" in the conventional sense to business elites more commonly labelled "white-collar criminals". One possible way of classifying economic crimes is the following:

1. Harm government/taxpayer interests
 - Direct taxation (income tax)
 - Indirect taxation (VAT and other sales taxes)
 - Excise taxes (alcohol, fuel oil, tobacco)
2. Harm *all* corporate as well as individual/social interests
 - i.e. systemic risk frauds - Enron, WorldCom, Parmalat - that undermine public confidence in the system as a whole; bankruptcy frauds; maritime frauds; payment card frauds; pyramid selling; high-yield investment/advance fee frauds
3. Harm social & some corporate interests but benefit some other "mainly legitimate" ones
 - some cartels, transnational corruption (in relation to country *paying* the bribe, not *receiving* the bribe);
4. Harm corporate/governmental interests but benefit mostly illegitimate ones and some consumers
 - Intellectual Property theft and "hacking"

What we aim to do, within the limits imposed by the very imperfect data, is to review what is reasonably understood about the economic crime situation in Europe in 2004, and what upward and downward trends there are in economic crimes, to enable our societies to confront those crime issues in as rational a way as is possible.

We think that it is important to look also at the complex relationship between "economic" and "organised" crime" which in terms of policing and prosecution - if not in early criminological theory¹⁵⁰ - have been treated as if they were distinct phenomena. In particular, though the research base for this is not yet developed fully, we have to think about the relationship between the harms affecting people, and the cost-effective deployment of resources to confront those harms, irrespective of what label we have attached to them in the past. Is it more harmful if frauds are committed by gangsters than by multinationals or small businesses, and why, unless there is reason to suppose that the gangsters are attempting plausibly to reach upwards to become major power players in society and the economy? What is the relationship between harms from the effects on the direct victims and the wider social interests? These are important issues which require us to think quite deeply about our own assumptions in the culture of crime control. One aspect that we have begun to consider is something that is not obviously part of the routine "crime control agenda" in departments of the interior and justice in Europe at all. Tax evasion is significant to both richer and poorer Council of Europe member states, and harms the basis for the crime control and welfare programmes of all.

Recorded economic crime may not represent the largest category of crime in European countries by number of cases, but the economic and social damage is disproportionately high. The losses - like those for other types of crime - have to be seen in the context of affordability criteria such as GDP (both per capita and of the groups affected). The emotional effects are not captured in pure financial data and some identity and investor/telemarketing frauds have devastating consequences in terms of life opportunities and broken dreams, as well as undermining trust (especially where there is no government or industry-wide compensation scheme):

- According to a recent survey, for companies that were victims of fraud, the direct ("tangible") average cost of fraud per company amounted to US\$ 1.7 million over a period of two years. This does not take into account the "collateral damage" from economic crime on business relations, workforce morale and branding.¹⁵¹
- In the UK, cigarette smuggling in 2003-04 was responsible for €3 billion in lost revenue from tax and duty, while a further €1.1 billion was lost as a result of smuggled hand-rolled tobacco. Smuggled cigarettes accounted for 15% of the UK market. An additional €400 million was lost from smuggled alcohol and €550 million from smuggled dutiable fuel oil. Missing trader fraud losses fell, however, due to tightened procedures. One accounting survey¹⁵² estimated fraud against companies at £32 billion, with a further £8 billion spent on protection - but the validity of these data are open to question.
- In Germany, economic crimes account for only 1.4% of all crimes recorded but for more than 55% of the material damage. However, immaterial damages are considered to be even more important, in particular in terms of distortion of market competition, the impact on other companies linked or depended on those committing crimes, the damage for society by offences against environmental,

150 See Sutherland, E (1983) : White-Collar Crime - the Uncut Version. Yale. The original manuscript was written before the second world war, but was cut by a third, inter alia to remove the corporate names that might have been less willing to give funds to Indiana University where Sutherland worked.

151 PriceWaterhouseCoopers Global Economic Crime Survey 2005.

152 <http://www.rsmi.co.uk/rrweb/news.nsf/content/all+by+unid/9679975828B8AE8280256F100348832?opendocument&newssection=RSM+Robson+Rhodes+News>

food, labour security and other laws, and the possible loss of confidence in the functioning of the economic and social order altogether.

- In Serbia, the material damage of economic crime in 2003 was estimated at €300 to 500 million.
- With regard to fraud against the interests of the European Communities in 2004, identified fraud related to structural and cohesion funds amounted to EURO 695 million (71% of the total notified by EU member States to the European Anti-Fraud Office, OLAF), fraud related to "traditional own resources" to EURO 206 million (21%), and fraud related to agricultural expenditure to EURO 82 million (8%).
- During 2004, the European Commission issued another 6 decisions against unlawful horizontal agreements, involving some 30 companies. These cases were: copper plumbing tubes, sodium gluconate, French beer, raw tobacco in Spain, hard haberdashery - needles and choline chloride. Fines totalling over EUR 390 million were imposed in these decisions¹⁵³. These are in addition to national anti-cartel sanctions.

High-profile cases in recent years – such as Enron, Parmalat, Vivendi Universal, Tyco or WorldCom – attracted attention of the public and criminal justice to economic crime. The frauds were facilitated by poor accountability, weak audits and regulators, corruption and alleged complicity by banks. The material damage was billions of Euros but risk of systemic economic damage due to loss of confidence, though hard to calculate, is one reason that led the Basle Group to develop risk-based criteria for financial institutions. Another lesson learned is that even cases that do not end with a criminal conviction may still cause considerable damage in terms of a weakening of public confidence in business, as arguably experienced in Germany in the Mannesmann/Vodafone case. (A paradox of this is that some argue for more covert handling of elite corruption and economic crime cases to avoid this collateral damage.)

Turning to an "in transition" country, a report prepared by consultants on the basis of extensive work with public and private sector bodies suggest that Georgia losses \$200 million per annum of potential state revenue in the petroleum industry, \$25 million in the tobacco industry and \$40 million in the alcoholic beverage industry.¹⁵⁴ As regards the sources of these losses, the report identifies specific challenges:

in terms of production (e.g. buyers of crude oil have to offer informal payments to secure crude supplies), refining (crude supplies are undocumented and can include theft from pipelines and rail cars or smuggled product from Chechnya, etc; refiners also sell naphtha for blending into low-quality gasoline and mazut for low-quality diesel), importation (transit fraud), and marketing (under-reported sales to evade VAT; gasoline, diesel, and even LPG is sold from roadsides).¹⁵⁵

As for cigarettes, six distinct types of excise tax leakage were identified in the Georgian market:

- (1) The illegal use of counterfeit excise tax stamps on cigarettes manufactured domestically.(40% of all cigarette excise tax leakage for the domestic cigarette market) ...
- (2) The illegal use of re-used excise tax stamps on cigarettes manufactured domestically.

153 European Commission (2005): Report on Competition Policy 2004. SEC(2005) 805 final

154 BearingPoint, Inc (2004): Revenue Enhancement Group Report (prepared for USAID/Caucasus, contract 114-C-00-03-00143-00), 24 June. Virginia: BearingPoint, p ii of pp 77 www.bearingpoint.com and http://www.usaid.org.ge/programs/pdf/18.pdf

155 BearingPoint op cit p 2.

(40% of all cigarette excise tax leakage for the domestic cigarette market) ... (3) The existence of a barter system whereby cigarettes are manufactured just inside the Russian border, yet are considered domestically-produced. (20% of all cigarette excise tax leakage for the domestic cigarette market) ... (4) The illegal import of cigarettes that were not manufactured in Georgia (border smuggling). (25% of all cigarette excise tax leakage involving cigarette imports) ... (5) The illegal import of counterfeit cigarettes bearing counterfeit cigarette excise tax stamps into Georgia. (35% of all cigarette excise tax leakage involving cigarette imports) ... (6) The illegal import of cigarettes bearing counterfeit cigarette excise tax stamps into Georgia. (40% of all cigarette excise tax leakage involving cigarette imports).¹⁵⁶

It is clear from the range of evasion methods described that persons involved span the public sector, the private sector and the general population. As Transparency International reported:

The [Georgian] ministry of the interior and the state border protection service both came under scrutiny in early 2004. The former deputy interior minister resigned in March after he was charged with violations of customs regulations on imported vehicles that left a 9 million laris (US \$4.4 million) shortfall in the budget for 2000–03.⁸ The border protection service director, Valeri Chkheidze, was accused of corruption and the head of the personnel department was arrested on charges of fraud and counterfeiting after a military investigation. The president has demanded an end to corruption in customs and, at the time of writing, work is currently underway, with the help of European experts, to rewrite the customs code with special attention to delineating the responsibilities of customs officials. It was also expected that legislation would be passed to ensure that in future goods will be cleared at the border rather than inside the country's breakaway regions, the source of most of Georgia's contraband. Major infrastructural changes will be required to ensure this happens. The head of customs also declared that he is to cut his department's staff by nearly 400 after skills testing of current employees. However, many of those engaged in smuggling are economically and socially deprived, making any crackdown both a political and social litmus test. Until their livelihood can be enhanced by other means, it might be unwise and even dangerous to pursue a strategy that punishes the offenders without attacking the large-scale smugglers, law enforcement bodies, and corrupt officials who facilitate smuggling and permit it to continue unhindered.¹⁵⁷

So, whilst it would not be correct to say that "everybody does it", in Georgia as in many other countries in which misappropriation and evasion is endemic, many distinct social groups are involved – civil servants, big traders and enterprises, very small traders – powerful people, powerless people and those in between.

In one sense, then, in the short term, all these groups gain from economic crime. But in a wider sense, and in the longer term, these same groups lose, as do all other groups. One of the persistent and structural impacts caused by economic crimes such as duty evasion is the damage done to states revenue and to democratic life. It has been estimated in a confidential report that we have seen that Georgian state revenues could be improved by one third if these losses were stemmed. This has implications for states abilities to ensure the development of institutions, the rule of law, and orderly development of markets. Even where new governments are elected partly on a popular platform of tackling corruption, they can find the necessary measures to be unpopular, as the interests of many groups seem threatened and not much seems to improve in the

156 BearingPoint op cit pp 17-18.

157 TI, 2005, op cit, p 149.

short term.¹⁵⁸ The financial and social losses can be very considerable, as development is forestalled and insecurity increases.

The roster of winners and losers from economic crime is therefore rather a mixed one, with some groups losing in the short term and the longer term, but others gaining in the short term and thus tolerating the longer term risks. Where economic crimes are so widespread as to be endemic, then they reflect deeper problems, as well as exacerbating them. For example:

The economy of Kosovo is directly affected by the evasion of duty because of the smuggling of goods. The entire society is damaged [with] a very negative influence on the confidence of the citizens regarding the officials (law enforcement agencies and the judiciary, politicians...). More than the feeling of a public insecurity, the main threat can be the arising of a new civil crisis in the area due to economic matters. A few people become richer and take control of the key points in the economy of the area.¹⁵⁹

Similarly, for Albania:

Persons and institutions corrupted [resulting in] damage to the Albanian taxpayers and Albanian state budget. This phenomenon has another negative impact on the reforms and other international undertakings of the Albanian state, threatening in this way its security and stability. [...] public confidence in politicians has decreased considerably. Organized crime and corruption have jeopardized the [market and institutional] reforms and have contributed to the growth of poverty. Loss of confidence in law enforcement agencies and the judiciary. Negative influence on public health [including] poisoning and deaths as a result of selling counterfeited products, or out of standards goods. Public insecurity [...] the concept that the country has no future, and that the only way to make a living is by immigrating to other countries. This, creates in turn, a greater demand for illegal migration, and contributes to the increase of organised crime.¹⁶⁰

One way of reporting impacts and – apparently, standardising them within a common metric - is by referring to financial impacts. Whilst the limitations of this are obvious – for example, many social or structural impacts are very difficult to express in terms of cash alone, the money approach does give a starting point. For example in Slovenia in 2004 the police detected 61 criminal groups (said to contain 544 known/ascribed "members"), of which 45 groups matched the criteria for identification of "organised" criminal groups. The majority of criminal groups were involved in drugs and illegal migration. However the relatively small number detected as being active in the area of fraud had a relatively big financial impact, according to these sources. The following table refers to all the criminal offences of organised crime for which the Slovenian police filed crime reports in 2004:

158 Huber, M (2004): State building in Georgia: unfinished and at risk? The Hague: Netherlands Institute of International Relations ('Clingendael'), February, p 36 of pp 86.
http://www.clingendael.nl/publications/2004/20040200_cru_paper_huber.pdf

159 Source: Reply to the CARPO questionnaire 2005.

160 Source: Reply to the CARPO questionnaire 2005.

Table 3: Slovenia - Organised crime cases in 2004¹⁶¹

OFFENCES: ARTICLE OF SLOVENIAN LEGAL CODE	No. OF OFFENCES	DAMAGE (IN MILLION SIT)
196 - Unlawful manufacture and trade of narcotic drugs	92	.
197 - Rendering opportunity for consumption of narcotic drugs	2	.
211 - Larceny	1	0.1
212 - Grand Larceny	2	8.2
213 - Robbery	1	0.02
217 - Fraud	3	11.63
218 - Extortion	4	1.5
221 - Concealment	1	.
252 - Money laundering	1	.
255 - Smuggling	1	.
256 - Document forgery	3	.
302 - Obstructing of official in performance of official act or retaliation to official	1	.
310 - Illegal manufacture of and trade of weapons or explosive materials	8	.
311 - Illegal crossing of state border or territory	105	.
TOTAL	225	21.46

All agencies appreciate the limitations of such information, due to the unknown ratio between detected/recorded crimes on the one hand, and all actual instances on the other. Fortunately, in relation to some aspects of economic crime, it is possible to move towards an estimation of such ratios (which are likely to be specific to sector and circumstances). For example, in a Swedish exercise looking at tax fraud in the food industry, customs officers randomly stopped and searched 1,730 commercial import shipments, comparing the undeclared revenue discovered with the revenue that had been declared:

A study was carried out to estimate the volume of uncollected customs revenue in all of 1999 by means of a number of monitoring actions representative of both commercial goods and other traffic from non-EU countries from 15 April through 15 June and from 15 August through 15 November of that year. The unreported volume of uncollected revenue was then calculated by subtracting the uncollected revenue that Customs was able to detect and rectify in 1999 from the total estimate. A total of 1,730 randomly selected commercial import shipments were checked. In addition, 10,312 checks of other traffic to Sweden were made. The commercial selection was proportional to the number of shipments received in the various customs regions and by the individual customs offices based on 1998 figures. Although not all the other traffic was studied, the intention was to obtain a representative sampling on which to base a nationwide estimate.¹⁶²

Similar exercises have been done in other countries and in other markets. The remaining problems are that (i) it is virtually impossible to stop and inspect all shipments or transactions, not only because of manpower limitations, but also because commercial trade would be severely disrupted and trade interests would have grounds for complaint; (ii) dilemmas arise in sampling (locations, times, etc) and it is unclear what assumptions to employ in extrapolating from the sampled "stops" that do occur; (iii) it would be hazardous to extrapolate from one type of economic irregularity or crime to another so, for example, one could hardly extrapolate from duty evasion to financial market manipulation; (iv) criminals are highly responsive to controls, so

161 Source: Reply to the questionnaire by Slovenia.

162 Swedish Economic Crime Bureau, op cit, pp 10-11

exercises such as that undertaken for purposes of estimation may result in changes in modus operandi¹⁶³.

In short, although such exercises give an inkling of some financial costs of past evasions in delineated areas, they cannot function as general, forward-looking risk assessments. That said, they may be found more useful than the usual national official statistics on detected crime. Overall, while economic crime is a significant problem in the wealthier countries of Europe, it is not believed to have yet reached proportions which would threaten the stability of economic and social systems. The situation is different in the younger economies of central and eastern Europe, where economic crime leads to a significant loss in public revenues, undermines the development, stability and functioning of market economies and discourages foreign direct inward investment.

3.8 ECONOMIC CRIME VERSUS CRIME IN GENERAL

Given the above mentioned conceptual problems, economic crime statistics must be considered with caution. There are several ways of thinking about the significance of economic crime. The first is statistical. In terms of numbers of cases recorded, prosecuted or adjudicated, economic crimes in most European countries account for an important, but not the most important category of crime. For example:

- In Germany in 2004, fraud, breaches of trust, insolvency offences and competition offences combined amounted to over 1 million cases or more than 15% of all offences recorded. However, using the definition applied by the police, namely that such offences would need to cause damage beyond the individual victims (for example to the economic system in general) or require specific commercial skills, only 94,743 cases (or 1.43% of the total) are considered economic crimes.
- In the Russian Federation, 402,300 cases of economic crime were registered in 2004: about 13% of all recorded crimes.
- In Sweden, some 70,000 cases (or 5.6% of recorded offences) were related to fraud, tax offences, embezzlement and breach of trust, crimes against creditors, currency counterfeiting and others. However, in a more narrow sense – crimes against creditors, book keeping and tax offences – less than 13,000 offences (about 1% of all crimes) are considered economic crime.
- In England and Wales (excluding Northern Ireland and Scotland), fraud and forgery combined constituted 7% of all recorded crimes in 2003-2004. In numerical terms, fraud and forgery fell 4% to 317,900 offences, plus 1,696 recorded by the British Transport police, a drop of 1.1%. Of these, 130,000 (41%) were cheque and payment card frauds. Less reliable because of poor reporting are the recorded crime data from non-police bodies in England and Wales in 2004, such as customs and revenue offences (49); trade descriptions offences (510); and adulteration of food (34).

Yet obviously, numbers of recorded crimes are not a sufficient measure of seriousness: if they were, then homicides and rapes – which are relatively few in number – would be considered unimportant. Across Europe, by volume if not by value, frauds such as payment card frauds, embezzlement and breach of trust are – alongside tax frauds – the most widespread forms of recorded economic crime:

¹⁶³ A partial test of this is whether different evasion levels do occur in the later period – depending on assumptions about speed of transmission of criminal awareness – though without a time series, it is dangerous to be confident.

- In Germany, in terms of numbers, fraud related to financial credit for commercial activities in connection with commodities, services and financial services accounted for 40% of the 94743 cases of economic crime in 2004. Insolvency offences accounted for 16%, offences in connection with employment for 15%, offences related to investment and financing for 13%, fraud and breach of trust connected with investments for 11%, competition-related offences to 5%.
- In the Russian Federation, general fraud (13%), embezzlement (13%), customer fraud (20%) and counterfeiting of money or securities (7%) are the main types of economic crime.
- In countries of south-eastern Europe (Albania, Bosnia and Herzegovina, Croatia, Serbia and Montenegro and "the former Yugoslav Republic of Macedonia") tax and customs fraud – also related to the creation of fictitious companies and fraudulent bankruptcy – and fraud related to financial credit are important categories.
- In Sweden, fraud and fraudulent conduct by individuals are widespread, but crimes against creditors, book keeping offences and tax offences are considered the main economic crimes.

Moving away from recorded offences, over a third of European businesses – especially larger firms – are victims of fraud and other types of economic crimes such as embezzlement, breach of trust, cybercrime or corruption¹⁶⁴. Given the number of staff who work for firms and their scale of operations, this rate of victimisation is quite modest.

Payment card fraud continued to be a serious problem in 2004, with an increasingly large proportion occurring with "Card Not Present" as a reaction to the control environment. Most such frauds are internal to the countries (though in some countries in transition and holiday destinations, tourists may be targeted). However, there has been a trend towards identity frauds, though it is important to have a consistent definition of this. As yet, despite a move towards chip with PIN cards throughout Europe, the magnetic stripe continues to be vulnerable to fraudulent re-encoding – often involving dishonest merchants – and bank employees assist in revealing information about accounts that can be used to exploit debit cards.

As indicated above, cybercrimes – and increasingly computer-related fraud – are estimated to cause several hundred billion Euros in economic losses globally, though it is important to appreciate that these losses do not correspond to profits to cybercriminals but rather to the costs of security measures and repair, as well as to opportunity costs while systems are down. Reports show, for example, that while in previous years, only 4% of cyber attacks were targeted at e-commerce, by July 2004 some 16% of attacks were aimed at e-commerce and were presumably at least in part driven by economic motives.¹⁶⁵ Throughout the world threats to confidential personal and financial data – in the form of Phishing attacks and Trojan horses – grew considerably in 2004. With regard to copyright offences, the estimated share of pirate software among users in Council of Europe Member States in 2004 ranged from 25% in Austria to 87% in Russia and 91% in Ukraine.

Counterfeiting of other commodities is also significant: in 2003-2004, 54% of bulk commercial cigarette seizures by the UK's HM Customs and Excise were counterfeit,

¹⁶⁴ PriceWaterhouse Coopers Global Economic Crime Survey 2003. The proportion is not as surprising as it may seem, since the size of firms is quite large and we must apply a different logic to victimisation against institutions that employ thousands of people than we do to any crimes against individuals.

¹⁶⁵ Symantec Internet Security Threat Report VI (January – July 2004).

compared with 41% in 2002-2003 and 15% in 2001-2002. Again, this may reflect the greater corporate controls over the export of those cigarettes that might have been smuggled to evade tax; but also the growth of "Wild West" trading areas such as Kosovo.

3.9 ECONOMIC CRIME AND ORGANISED CRIME

Though few business people engage in wholly criminal activities such as trafficking and selling illegal drugs, and relatively few "ordinary" criminals engage in fraud, a distinction between economic crime – as "white collar crime" by otherwise legal businesspeople who are tempted to get take short cuts – and organised crime (as "black collar crime" by criminals who operate on illicit markets such as drugs) would be artificial and only illustrate a small part of European reality today.

Economic crime and organised crime appear to be linked in many areas – for example in value added tax fraud, public procurement, privatisation, counterfeiting and distribution of commercial products, investment fraud, environmental crime, payment card fraud and fraud against the European Union's financial interests. That part of the illegal profits generated by economic crime that is not used for short-term consumption needs to be disguised, which makes money laundering also closely related to different forms of economic crime. (In some cases, as in VAT fraud, the disguise is part of the crime itself.) Economic crime is thus one of the main markets of organised criminals.¹⁶⁶ Furthermore, some economic crime involves corruption in its various forms (embezzlement, kickbacks, conflicts of interests, trading in influence etc), and so undermines good governance in the public sector as well as in the private sector. At its most extreme, there is a "tipping point" beyond which the public administration is seen to be complicit in crime (especially in elite crimes) and both democracy and social ethics are undermined as governments are viewed as illegitimate.

In terms of the traditional political discourse and the popular imagination, organised crime is "black collar" crime, indulged in by "real" criminals who are involved in wholly illegal markets (both the means and the ends are illegal), whilst economic crime is "white collar", indulged in by legal market entrepreneurs who have been tempted to take short cuts (the means are illegal but the ends are legal). There is something to be said for this view, in the sense that it distinguishes between markets which are legal (banking, financial products, manufacturing, services, etc.) and that which have been defined as wholly illegal (e.g. drugs). The disadvantages of the distinction are that (a) it is a purely formal one, resting on whether a practical market is defined as legal or illegal; (b) even in definitional terms, legal and illegal markets and activities tend to shade into each other – as will shortly be illustrated – and (c) at least some individuals, networks and groups are involved in criminal activities in both legal and illegal markets. For these reasons, rather than seeing organised crime and economic crime as separate and mutually exclusive categories, it may be more realistic to think of organised crime involved in selling illegal goods and services as being a sub-set of the broader category of economic crime.

¹⁶⁶ As also stated in the Europol EU organised crime report 2005: "Fraud is an extremely lucrative and often underestimated OC activity. Second only to drug trafficking in terms of profitability, fraud is the perfect example of low-risk high-profit crime. The very high threat it poses to the EU is further enhanced by the very fact that fraud is not considered a serious threat, and is dealt with accordingly by Member States' criminal law, which are extremely lenient thus inviting OC to resort more and more to this profitable and highly safe type of crime."

The overlapping, shading and merging of illegal and legal markets and activities can be illustrated by reference to financial sector frauds, which make up an important aspect of economic crime, and may be regarded as criminal or not, depending upon reactions to them. If the combined weight of private sector interests, regulators, judicial authorities and policy makers favours criminal prosecution (where that is possible for the behaviour discovered), then prosecutions may be initiated, reported upon by the press and discussed within civil society as "criminal". Recent developments in the United States illustrate this possibility, although it must be said that prosecutions have been limited. Similar reactions have been seen in Europe in relation to Parmalat and Ahold. Where, however, it is seen as inappropriate to treat the behaviour as criminal even though it may be criminal (for instance the "mis-selling" of savings and investment products in the UK), then people typically avoid the term "crime" in discussions about it. They do this partly because they are not thinking in those terms and partly to avoid the risk of defamation suits, especially in the UK where the legal environment is very plaintiff-friendly in libel cases. In between "criminal" and "non-criminal" definitions and reactions can be found a range of administrative or civil measures, fines and sanctions including temporary or permanent bans or disqualifications. Indeed the whole administrative approach to organised crime prevention (most developed in the Netherlands¹⁶⁷) tries to transcend this criminal/non-criminal issue by regulating the risk of organised crime.

In practice, regulators often favour giving guidance and quiet advice in the first instance, this being backed up by the possibility of administrative or civil actions, with criminal law being kept as something of a last resort or as a symbolic indicator that particularly blatant or harmful activities are not tolerated.¹⁶⁸

Turning briefly to people smuggling, a similar merging of legal and illegal market activities can be seen. Globalisation quickens flows of people, who move to gain new experiences, to gain language skills, to advance their education, to get work and work-experience, to make more money (from work and/or crime and/or marriage), send remittances home and/or to relocate permanently in areas with better prospects¹⁶⁹. With mobility becoming more of the norm than the exception, cities and neighbourhoods have become more transient and, within this flux, it is not so easy for authorities to distinguish between those who have a formal "right" to be present and those who do not. In such settings, the stronger and more demanding the requirements for entry into mainstream economic activities, the greater the displacement of effort into non-mainstream, "grey" or frankly illegal channels. Large sections of "irregular" or "grey" economies, exchange and barter of skills, services, goods and housing, sitting alongside and interacting with licit economies (for example, in burgeoning real estate markets), providing practical support for persons whose activities might at one time of the day be strictly legal and yet, an hour later, illegal (whether as unregistered workers

¹⁶⁷ See the study on "preventive legal measures" in: Council of Europe/Octopus Programme (2004): Combating organised crime – best practice surveys of the Council of Europe. Strasbourg.

¹⁶⁸ (They can also be an institutional protection device to avoid being criticised for not taking the incident sufficiently seriously.

¹⁶⁹ There is no detailed break-down for Europe, but the World Bank's review of Global Economic Prospects states (2005: p.85): "Although there is no universal agreement yet on how to measure international migrants' remittances to developing countries, a comprehensive measure of certain officially recorded flows—workers' remittances, compensation of employees, and migrant transfers—produced an estimate of \$167 billion for 2005, up from \$160 billion in 2004. Given measurement uncertainties, notably the unknown extent of unrecorded flows through formal and informal channels, the true size of remittance flows may be much higher—perhaps 50% or more. Because of their volume and their potential to reduce poverty, remittances are attracting growing attention from policymakers at the highest levels in both developed and developing countries.

doing licit work or "moonlighting" as drivers for criminals, prostitutes, etcetera). Entrepreneurs, agencies and networks that assist in the re-location of people from one region to another may at one moment be doing something legal, another moment crossing the line of legality or operating in a grey zone. All in all, people traffickers, those trafficked and those receiving them may be involved in a complex mixture of activities when viewed in legal terms. Some of them may also be involved in more obviously criminal activities, such as thefts, frauds, or drugs: most however will not be.

Throughout Europe, the majority of detected offenders are nationals of the country in which the economic crimes are committed, although many of them have transnational connections. It is possible, though there is no firm evidence, that organised criminals are less likely to be involved in predatory crimes such as theft, kidnapping, contract killing and extortion but seek to operate like regular businesspeople investing in the legal economy, exploiting business opportunities. However, sometimes, their personalities and violent habits get in the way. Similarities are also apparent in the way criminal and legal businesses are structured. In the modern knowledge economy, hierarchy and inflexibility are suboptimal both for legal and illegal businesses and, despite the power and scale of multinationals, most criminal and legitimate firms operate in looser networks.

The starting point may be different: criminal groups and networks are set up for the purpose of committing crimes, while legal enterprises are established *a priori* to do legal business but then may turn to fraud, corruption and other illegal practices.

Corruption is a major tool facilitating economic crime throughout Europe. Sometimes, this may be to avoid incrimination (by bribing law enforcement or the judicial authorities), but corruption may also facilitate VAT evasion, Missing Trader Intra-Community offences, and intellectual property offences. We must not always think of businesses as victims; they can also be offenders. This includes private sector corruption to obtain contracts, as reflected for example in recent allegations reported in Germany (Volkswagen, Infineon, Mercedes, BMW), as well as the more "normal" obtaining of construction and other contracts by economic actors linked to or acting as fronts for more traditional organised crime groups and networks. We are unable to state with confidence whether or not this represents a growing trend in corrupt behaviour by multinationals or whether the detection process has improved (for example via whistleblower protection). Another possibility is that previously closed and insulated national and regional networks, which have been complicit in economic crime through corruption and influence-trading, may break down in the context of globalisation and Europeanisation of licit markets, so improving the flow of information to the authorities and facilitating pan-European law enforcement against economic crime.

In practice, as fraud and other forms of economic crime and criminal behaviour (including private sector corruption) spread, and as organised criminals invest their proceeds into the legal economy, legal and illegal markets and activities increasingly overlap, merge and shade into each other. It may thus be more realistic to consider organised crime as being a sub-set of the broader category of economic crime.

In line with this, European countries increasingly report on different forms of economic crimes in their assessments of the organised crime situation. These include in particular:

- Value added tax fraud as reported by a number of EU countries, including "registered and unregistered evader fraud" in cash based businesses, "thief

fraud" by setting up bogus company registration to steal VAT; and in particular missing trader intra-community (MTIC) fraud, that is, VAT carousels.

- Fraud in connection with public procurement and accompanied by corruption, cartel formation, intimidation and violence to monopolise access to public contracts.
- Fraud related to privatisation. In several countries of the former Soviet Union and south-eastern Europe, the power of organised crime groups and networks is based on assets acquired primarily in the 1990s during the process of privatisation, under unclear conditions and reportedly with the involvement of political leaders and state officials
- Investment fraud involving non-existent companies and fictitious commodities and services, which move between European countries depending on police/regulator attention levels and target investors everywhere.
- Counterfeiting of legal products as a highly organised business managed by international entrepreneurs.

The trend towards "organised economic crime" is not limited to specific regions but can be observed across Europe. The extent to which it is discovered depends partly on whether there are direct victims willing to take their complaints to the authorities, and partly on how much effort is put into investigations by the public authorities:

- In Germany, 12% of organised crime cases recorded in 2004 related to economic crime activities. These 12% of cases generated 45% (or EURO 603 million) of the estimated profits of all organised crime (EURO 1.33 billion). The main activities were credit, investment and public procurement fraud. Most identified offenders were Germans.
- In the Netherlands, almost a third of organised crime investigations in 2004 involved fraud, primarily fraud related to turnover tax, excise duty and VAT. 61% of offenders were from the Netherlands, but many of them cooperated with suspects based in other countries such as Spain and the United Kingdom. Luxembourg is reported to have played a prominent role in the establishment of dubious businesses and the channelling of goods and invoices.
- In the Russian Federation and some other countries such as Georgia, predatory and violent crimes continue by the lower stratum of the criminal population, but are supplemented by smart and more sophisticated forms of crime, in particular economic crime. Targets are in particular the fuel and energy sector, the production of and commerce in counterfeit alcohol, cigarettes and consumer goods, transnational trade and financial services, precious metals and stones, public procurement at all levels, fraudulent bankruptcy and fraudulent misappropriations and aggressive takeovers of titles to property. The "legalisation" of illicit businesses and assets currently is a major preoccupation of organised criminals and businesspeople.
- In south-eastern Europe, economic crime accounts for a significant number of cases linked to organised crime, in particular in relation to tax and customs fraud, public procurement, privatisation, bank fraud, and counterfeiting of legal products. Albania reported 17 cases and Croatia 14 cases of "organised economic crime" in 2003. Bosnia and Herzegovina reportedly losses of hundreds of millions of Euros annually to "organised economic crime": in 2004, 907 cases were prosecuted, leading to the conviction of 212 perpetrators. In Kosovo, almost 5000 cases of economic crime were recorded but only 3 cases were clearly linked to organised criminals in the conventional sense. Even there, the absence of legislation and organised investigation means that the large quantity of both manufacturing and trading intermediaries of counterfeit products and software remains largely unidentified and unprosecuted.

3.10 INTERRELATIONSHIP BETWEEN ECONOMIC AND ORGANISED CRIME IN RUSSIA

As stated above, economic crime is one of the main markets of organised criminals in Europe, and in terms of proceeds generated and material damage caused probably the most important activity of organised crime. There is a particular relationship between the two in Russia.

During the 14 years since the collapse of the former Soviet Union, Russian organised crime underwent significant changes in organisational and behavioural patterns. For a proper understanding of Russian organised crime's evolution, it is necessary to clearly see the difference between the current situation in Russia and that of 5-15 years ago. The political changes that occurred since 1999 forced organised criminal groups to adapt themselves to the new environment, both locally and internationally. Up to 1999, the country was under political transition; and state structures (including law enforcement) were being transformed and therefore weakened. Since 1999, the Russian Federation experienced a significant consolidation of domestic institutions and improvement of the economic situation. The latter developments transformed the trends and patterns in both economic crime and Russian organised crime.

Analysing the dynamics of Russian organised crime development after the break up of the Soviet Union, we note that according to the Ministry of Internal Affairs of the Russian Federation, between 1990 and 2001 the number of organised groups and criminal societies (criminal organisations), increased almost 16 times (from 785 to approximately 12,500). This is not a case of growing "disorganisation" of crime, since the total number of members of those formations grew more than 5 times (from 15,000 in 1991 up to 80,000 in 2001). As to the number of crimes committed by organised groups (restricted to only those that were investigated as criminal cases), it has risen almost 10 times (from 3.5 thousand up to 33 thousand) during the last ten years.¹⁷⁰

The interpretative problem lies with the fact that the Russian theory of law and criminology operate with two overlapping and loosely defined categories to describe forms of criminal organisations: a) "organizovannaya gruppa", i.e. organized group, and b) "prestupnoye soobschestvo", i.e. criminal community. There are no fixed criteria for definition and categorisation. As a rule "prestupnoye soobschestvo" is a larger entity which comprises a number of groups. In 1998, the Main Directorate for Fighting Organised Crime of the Russian Ministry of Internal Affairs reported the existence of 76 criminal communities. The existing criteria for definition of organized crime may equally comprise tax evaders from the management of a giant transnational company and half a dozen mobsters as "an organised criminal group".

So what has changed since 1999? It is believed that the number of criminal groups either remained approximately the same or decreased slightly. Various sources estimate the number of organised criminal communities between 5,000 and 11,600; while the number of members remains more or less stable (about 86,000 people). However, only 300 to 400 of these groups may be considered to be really important, out of which as few as 15 criminal organisations possess so called network structures, which allow us to categorise them as full fledged criminal organisations¹⁷¹. But from the qualitative point of view, today's Russian organised crime is very different.

¹⁷⁰ Ministerstvo Vnutennih Del Rossiyskoy Federatsii. (MVD RF). "Svodnyi otchit po Rossii za 2001 g". Moscow, 2002, pp. 3-4

¹⁷¹ See also Galeotti, Mark. (2004) "The Russian 'Mafiya': Consolidation and Globalisation', Global Crime, 6(1), 54-69. For a sceptical alternative view of Russian organised crime, see

The "core" of the Russian organised crime, in accordance with the Russian approaches to strategic analysis, may be described as about 130 criminal communities (soobschestva), which comprise over 1 200 organised criminal groups (gruppirovki) of cumulative strength of approximately 11 000 men and women¹⁷². The largest among the communities are "Dalnevostochny Vorovskoi Obschak", "Uralmashskie", while the more known especially in the West are "Solntsevo", "Chechen", "Tambov", and "Podolsk" communities.

Though the process of consolidation of Russian organised crime is far from being over, it is clear that the internal struggles stemming from the initial division of the spheres of interest are coming to an end. The most important organised criminal groups have already established the attainable level of influence over the economy and local institutions as a whole. Typologically a pronounced shift from violent towards economic crime is being observed, though this does not mean that threats and extortion are absent.

The increase in organised criminal activity is registered both in the category of violent crime (which is usually associated with the patterns and typologies of organised crime) and for economic crimes. For example, in 2001 there were 382.4 thousand registered cases of an economic nature (+24% as compared to 1999), of which 61.6 thousand were classified as "large and especially large scale" in accordance with Russian law (+38% to 1999). Out of those cases, 10.2 thousand have been committed by organised groups (in 1999 – only 7.8 thousand).¹⁷³ The dynamics of the development of economic crime in recent years is illustrated by the table below which is based on official MVD statistics.

The legalisation of illegal businesses and proceeds of crime as well as fraud have become the main current trend in the development of Russian organised crime. Shadow economic activity and money laundering are among the major preoccupations of the organisers of Russian criminal networks.

The exact amount of dirty money circulating in the Russian economy is hard to establish. The approximate evaluation may be based on the assessment of the size of the Russian shadow economy, which according to the Russian National Security Council in September 2003 amounted to 20 – 25 % of GDP i.e. about 2-2.5 trillion Roubles (or US\$ 67 – 83 billion) in annual terms. The input of the criminal activity per se was about 5% (500 bn Roubles) per year. The latter figure (which in dollar equivalent amounts to about US\$16.7 bn) may be regarded as a rough basis for the scale of criminal money laundering in the Russian Federation, discounting crime proceeds distributed in cash or otherwise spent in "final consumption" without any financial concealment process. In addition, a very significant illegal cross border outflow of funds continues. In 2002, it was estimated to total US\$12 bn a year. The current

Rawlinson, Paddy (1998): "Mafia, media and myth: Representations of Russian organised crime." Howard Journal of Criminal Justice. 37 (4). 346-358.

172 GUBOP MVD RF. "Sostoyanie pravoporiadka v Rossiiskoi Federatsii i osnovnye resultaty deyatelnosti organov vnutrennih del I vnutrennih voisk". Analiticheskie materialy. Moscow, 2000, p. 13

173 The latter figure relates only to the cases, where the investigation had already been completed. Besides, the comparison with 1999 may be somewhat misleading, because it is generally believed that during the years of Mr.Yeltsin's rule, the governments created by oligarchs very not interested in exposing many of important cases of serious economic crime and they were never registered or even started. In general, the level of latency in Russian organized economic crime is very high and 5-6 times exceeds the official reported rate. In relation to organized criminal activity it may be as high as 10-15 times.

situation represents a drastic positive turnaround as compared to that of only five years ago, when according to the Interior Ministry figures (which we cannot independently test), the shadow economy accounted for nearly 40% of GDP (US\$100 -110 bn) and the illegal capital flight was at least US\$24 bn a year.

Table 4: REGISTERED ECONOMIC CRIMES IN RUSSIA (thousands)¹⁷⁴

	1998	1999	2000	2001	2002	2003	2004
TOTAL	209.7	256.2	321.9	325.9	289.6	376.8	402.3
Theft – Article 158 of the Penal (Criminal) Code of the Russian Federation	30.4	39.6	47.2	42.8	23.3	8.9	3.2
Fraud – Art. 159	45.2	47.3	47.8	46.2	45.7	47.5	54.1
Misappropriation or embezzlement of funds. Art. 160	43.0	46.7	51.1	51.0	47.4	44.7	51.1
Inflicting damage to property through fraud or abuse of trust Art.165	13.6	15.5	19.8	21.2	15.4
Illegal entrepreneurship - Art.171	5.3	6.4	8.6	7.4	5.0	1.5	0.9
Money Laundering – Art.174	1.0	1.0	1.8	1.4	1.1	0.6	2.0
Counterfeiting of Money or Securities -Art.186	10.7	9.3	14.3	15.8	23.6	26.0	28.5
Smuggling - Art.188	3.6	4.0	4.4	3.9	3.5	2.5	2.1
Tax evasion and non-payment of mandatory duties by natural persons - Art.198	1.4	3.6	6.8	6.8	5.0
Tax evasion and non payment of mandatory duties by legal persons & other entities – Art.199	2.6	7.9	15.4	16.5	7.9
Customer fraud – Art.200	44.0	63.7	85.0	92.2	80.9
Abuse of authority – Art.201	1.8	2.4	3.9	4.0	4.1	6.0	5.2
Commercial bribes Art.204	1.0	1.2	2.1	2.5	2.8	2.4	2.0

Despite the impressive improvements in action against money laundering, Russia still faces significant problems. Describing the current situation we may say that a specific sub-form of crime has emerged in Russia, with global effects. The analysis of the strategic goals of the Russian Organised Economic Crime shows that they are three-fold:

1. securing excess profits;
2. achieving for itself a necessary level of legal authority in the society;
3. securing of group (clan) interests (religious, ethnic, local, professional, etc).

In order to achieve those goals Russian organised crime uses various types or activities, starting from legal and semi-legal entrepreneurial activities and finishing with homicides and acts of terrorism. Therefore, any classification of Russian organised crime activity is rather a theoretical type of exercise. On the other hand for the sake of comprehensiveness of the analysis let us briefly review its typological traits and current priorities.

Geographically the areas of priority activity of Russian organised economic crime include:

¹⁷⁴ Source: Ministry of Interior. Main Information and Analysis Centre. Sostoyanie prestupnosti v Rossii. Moscow 1998-2005

- regions of production of most lucrative types of natural resources – Tyumen, Tatarstan, Yakutia, Orenburg oblast;
- main industrial production centres – the Urals, Irkutsk oblast, Krasnoyarsk, Nizhny Novgorod, Togliatti;
- border regions and free economic zones (internal “offshores”) – Krasnodar region, Ingushetia, Kaliningrad, Vladivostok;
- financial centres (Moscow, Saint-Petersburg).

Further detailed analysis shows that among various sectors and industries, the primary targets for the infiltration of organised economic crime in Russia are:

1. fuel and energy sector;
2. production and unlawful commerce in ethyl alcohol, alcoholic beverages and tobacco;
3. consumer goods production and commerce;
4. external economic activity (export-import, financial and other services, international transport, tourism, etc.)
5. prospecting, manufacturing and commerce in precious metals and stones;
6. operations with the money of federal, provincial and local governments’ budget funds;
7. violation of intellectual property rights (intellectual piracy);
8. banking;
9. fraudulent bankruptcies and fraudulent misappropriation/aggressive overtaking of property titles.

Operations with property (illegal, semi-legal and legitimate) are currently one of the most lucrative spheres of activity of organised economic crime in Russia. Russian criminals buy up shares in companies or individual enterprises using crime proceeds. According to the Russian Interior Ministry data (based only on investigated cases) over one quarter of established criminal communities in the country as a whole launder their criminal proceeds in legal businesses through purchases of real estate, controlling blocks of shares in enterprises, investments in new businesses. In more economically developed regions of Russia, roughly a half of all organised criminal groups are laundering their funds in this manner. However given the unobserved nature of much laundering, the true figure may be substantially higher.

The trends of 2000-2004 demonstrate that organised criminals use the procedures of Russian bankruptcy law as well as other schemes of aggressive takeovers of ownership and/or management of companies; seek to infiltrate staff into targeted enterprises; force legitimate executive officers of enterprises and/or owners into concluding deals using organised crime-connected individuals or businesses as intermediaries; and use corrupt politicians, local authorities and/or members of law enforcement to extort funds.

There has been some tendency towards consolidation of criminal groups within given territories. Statistics of investigated cases show that slightly over half of the organised economic crime groups co-operated with other criminal structures and formations in order to achieve their operational and tactical goals.

Nearly one fifth of all groups demonstrate a significantly higher level of co-operation and co-ordination of their activities. They are united into a number of large mega-groups (“soobschestvo”), but at the same time preserve a distinct level of autonomy and operate mainly separately within the lines of common strategic and tactical goals.

Only 2% of organised economic crime groups are involved in highly integrated huge criminal organisations of regional or trans-regional levels, thus creating a united criminal activity space controlled from a sole centre. And despite the notoriety of some criminal groups, it is doubtful that any organised criminal group effectively exercises control over the whole Russian territory or huge chunks thereof.

As elsewhere, the organised criminal landscape of Russia is quite varied. The majority of the numerous organised criminal groups work autonomously, not interacting with other at all, or are engaged in limited co-ordination of activity, which in the majority of cases takes the form of "division of labour" or territory. Nevertheless we are witnessing the period of important transformation of Russian organised crime, particularly organised economic crime. The above mentioned changes shape new developments and trends in transnational crime.

Sometimes controversially - in relation to "the oligarchs" - the containment of growth and sophistication of organised economic crime is one of the main goals of the reform of the system of law enforcement currently undertaken in Russia. The changes are taking place in all the ministries and government entities related to combating organised crime. Since 2001, significant progress has been achieved in the creation and enforcement of controls over money laundering. On 7 August 2001, President Putin signed the federal law (number 115-FZ) on action to combat the laundering of proceeds from crime. The law is aimed at preventing and suppressing activities related to money laundering. It regulates, among other things, reporting obligations and monitoring requirements for transactions involving monetary or other assets.

3.11 THREAT ASSESSMENT AND ECONOMIC CRIME

An important point about the widely-used term "threat assessment" is that it is relatively rarely that one finds this term being used in its normal English-language sense, meaning that someone has really threatened someone: "send a million euros by Friday or we'll mount a Denial-of-Service attack on your on-line financial services", for example, or "bring in a verdict of innocent or your family will suffer". Most "threat assessments" are not about such threats but are about the wide gamut of crime problems that have been experienced by law enforcement agencies and that they consider to pose a visible or less visible threat to the socio-economic fabric.

Standard law enforcement agency crime assessment methodology utilises two principal dimensions - (i) the likelihood or probability of crime event; and (ii) the "harm" or impact if the event occurs.¹⁷⁵ In principle, the risk (or threat, if that term is preferred) - which is the conjunction of the two dimensions - may be represented in a variety of ways, for example in a 3 by 3 table.

Table 5: Assessing harm and likelihood of crime

		HARM		
		High	Medium	Low
LIKELIHOOD	High	Extreme	Medium	Medium
	Medium	Medium	Medium	Negligible
	Low	Medium	Negligible	Negligible

¹⁷⁵ Solana, Javier (2004): A secure Europe in better world: European Security Strategy (as adopted by the Council on 12th December 2003) Brussels.
<http://ue.eu.int/uedocs/cmsUpload/78367.pdf>.

In practice, however, there are complexities and difficulties in measuring both the likelihood/probability component and the impacts/harm component. For example, according to the literature, analytically the concept "likelihood of threat" is seen as being made of the two further components, "intent" and "capability". Each of these is further broken down as follows: "desire × confidence = intent", and "resources × knowledge = capability".¹⁷⁶ These are mental constructs that analysts all too often may do little better than guess at, on the basis of fragmentary and unconfirmed reports provided by sometimes self-serving and/or client-pleasing informants.¹⁷⁷

There is an additional layer of complexity in relation to estimating the "confidence" of an opponent. In intelligence circles, "confidence" (and hence "intent") is taken as being related in part to the opponent's susceptibility to, or fear of, possible retaliation – a concept which, in criminological terms, would correspond to a potential economic criminal's level of concern about criminal law enforcement, regulatory and administrative measures and/or other potential adverse consequences such as reputational damage (important mainly for ongoing prestige business enterprises, since those that are known to be about to go "bust" anyway may feel no corporate and less personal risk against which to balance the temptation to defraud).¹⁷⁸ So the analyst is required to make an estimation of the opponent's estimation of effectiveness and possible impacts of control measures. The requirement in intellectual and emotional terms is that the analyst be capable of knowing not only what the opponent thinks or feels about him or herself – but also what the opponent thinks or feels about law enforcement and other constraints.

Another set of conceptual and practical challenges lurk within the concept of harm (impacts). It appears relatively uncontroversial in the literature that harms need to be defined not simply in financial terms but also in other, social terms. Some influential commentators go to observe that such social terms need to be constructed by a range of stakeholders,¹⁷⁹ not just by policy-makers, subject experts and scientists. The implications of that view have yet fully to be worked though by governments, even if they are being explored.¹⁸⁰ Who are the relevant stakeholders and how their interests or assessments might be represented or constructed are open questions.

176 See for example [former] Queensland Crime Commission (QCC) and the Queensland Police Service (QPS), 1999, Project Krystal: a strategic assessment of organised crime in Queensland, Brisbane, June. For a www-assessable update, "written in a similar vein to the 1999 project Krystal report", see Crime and Misconduct Commission, 2004, Organised Crime Markets in Queensland: a strategic assessment, Crime Bulletin Series, number 6, September, Brisbane: Queensland Crime and Misconduct Commission, ISSN: 1442-5815, pp 48. http://www.cmc.qld.gov.au/library/CMCWEBSITE/CrimeBulletin_06_OrganisedCrimeMarketinQld.pdf. See also US Department of Defence Dictionary of military terms, Threat analysis, Joint Doctrine Branch, Joint Electronic Library: "A threat analysis will review the factors of a terrorist group's existence, capability, intentions, history, and targeting, as well as the security environment within which friendly forces operate."

177 Der Spiegel Online, 2005, Intelligence services: "That came from us", 5 April, <http://service.spiegel.de/cache/international/spiegel/0,1518,294118,00.html>

178 Levi, Michael (2002) : Suite justice or sweet charity? Some explorations of shaming and incapacitating business fraudsters. *Punishment and Society*, 4(2) pp. 147-163

179 Slovac, P. (1999): Trust, Emotion, Sex, Politics, and Science: Surveying the Risk-Assessment Battlefield, *Risk Analysis*, 19 (4), August, pp 689-701.

<http://www.springerlink.com/app/home/contribution.asp?wasp=04191324c5a240909eeac9538155e857&referrer=parent&backto=issue,14,19;journal,3,8;linkingpublicationresults,1:112113,1>

180 Glicksman, B, 2004, Improving Government Risk Management and Appraisal of Risk to the Public, paper given at

In practice, the information yielded from police and similar information sources and systems is tightly constrained not only by the analytic considerations touched on above but also, and more prosaically, by the police's ability to target only a proportion (an unknown proportion) of crimes and criminals. This is further inhibited by pressure to stop showing an interest when there is sufficient evidence for conviction in the case under investigation: there are always other cases to investigate. This makes it difficult to get a balanced picture of the types of people who commit economic crimes. Information sources for the law enforcement authorities include:

- Informants – whether police or whistleblowers;
- investigations into major crime networks/corruption that throw up suspicions and evidence of active assistance – there is a need to connect up “depth of field” by looking at highest common factors (often legitimate) like the law & accounting firms they use, or corporate referees and telephone/address service firms that “front” for businesses;
- suspicious transaction reports and audit reports made by bankers, accountants and other regulated persons;
- the collapse of professional firms or business enterprises that generate information about culpable involvement of intermediaries; and
- the boldness and powers of the investigative authorities and their priorities, in which context legal professional privilege and mutual legal assistance are particularly important.

Extrapolating from known cases, sources increasingly suggest economical criminals “ordinariness”. Whilst there has been a history tendency for police reports to emphasize foreigners or even an alien conspiracy when it comes to organised crime, many current reports suggest a mix of offenders, with national citizens taking (at least) their “fair share”¹⁸¹:

Members of criminal groups are mainly Croatian citizens with completed secondary school education, and of average economic status. They divide their roles in criminal organizations to the following: organizers, financiers, and forgers (they organize and allocate money regarding the preparations and commitments of the criminal acts, forge documents which are necessary for the fulfilment of conditions for approval of loans and credits) and mediators (persons employed in the firms, banks and other legal entities which are the subject of interest to the criminal groups).

Whilst by no means being extraordinary by way of background, economic criminals in Croatia, as elsewhere, are reported as being sophisticated in terms of their understanding of licit business and financial matters – and as being able to network well, for example with civil servants. The Croatia report refers to cases involving people who have good knowledge of the law and regulations on Value Added Tax, are capable of drawing civil servants into criminal schemes both as advisers and in order to “look the other way”, and can fake passable invoices of goods and services, so getting the Ministry of Finance to make unmerited VAT payments. (Ibid., p 10)

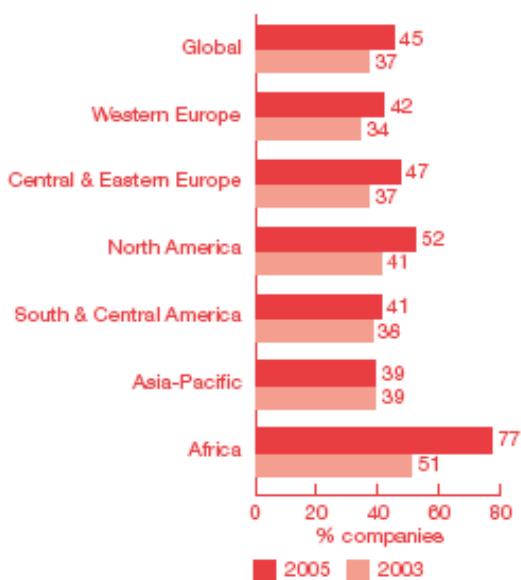
The use of various professionals as advisors and/or collaborators is found in western European countries, though to what extent – i.e. in what proportion of crimes and criminal groups – remains unknown (and certainly unreported).

Society for Risk Analysis, Calif: Palm Springs, 5-8 December, pp 26. This and related papers available via http://www.sra.org/events_2004_meeting.php

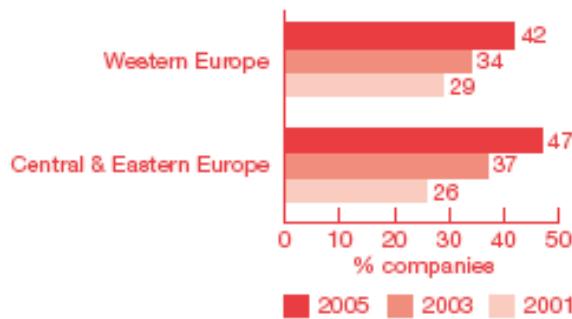
181 Source: Replies to the CARPO questionnaire.

Another perspective on threat is how victimised Europeans are compared with other regions of the world. It is impossible to gauge this with any certainty in the current state of our knowledge, since the scale and impact of economic crimes are unknown for many sorts of victim (particularly individuals). However, for the corporate sector, some insight may be gleaned from the 2005 PWC survey, which suggests that the proportion of Western European companies that become aware of and report being victims of fraud is lower than those elsewhere (though not, Africa excepted, very much so). The proportion of Central and Eastern European companies that report being victims of fraud is only slightly above the global average. In both "parts" of Europe, there has apparently been a significant rise in reporting since 2003, and a rise of 50% since 2001.¹⁸²

Figure 1: Companies reporting fraud (worldwide)



¹⁸² http://www.pwc.com/gx/eng/cfr/gecs/PwC_GECS03_global%20report.pdf, p.4. 2005 Global Survey,
http://www.pwcglobal.com/gx/eng/cfr/gecs/PwC_2005_global_crimesurvey.pdf p. 5. However, in addition to the methodological reservations expressed in the report, an unknown number of the companies responding to the survey are different from respondents in previous years (i.e. it is not a true panel survey), so there are grounds for reservation about inferences drawn about the rise in economic crime, however plausible.

Figure 2: Companies reporting fraud (Europe)

3.12 AUDITS AND PREVENTION OF ECONOMIC CRIME

Instead of looking to external threats, as law enforcement approaches traditionally have done, auditing looks primarily at internal areas of risk, with a view to closing them off to any threat (whether internally or externally generated). This is a valuable approach. According to the PriceWaterhouseCoopers 2005 global survey of economic crimes as seen by businesses:

The most common means of detecting fraud was by accident or chance, 34%, followed by internal audit, 26%. The more controls a company has, the better its chances of detecting fraud and recovering losses, the survey confirmed. Companies with a larger number of controls were better at discovering how much more damaging fraud was, uncovering three times as many losses as those with less controls. Additionally, companies with more than five fraud control measures were better able to recover their losses, (52%) than those with less than five control measures (43%). The internal audit is the most successful of all processes and controls [other than "chance"] in detecting fraud.¹⁸³

Broadly speaking, there are two forms of economic crime risk of concern to auditors: firstly, various forms of theft, whether by people inside a public or private sector organisations or by outsiders or by insiders and outsiders working together; secondly, and increasingly acknowledged, financial manipulations aimed at maintaining the appearance of strong and/or steady (smooth) financial performance. On the latter:

Managed earnings have many different names. Among them are income smoothing, cooking the books, and disclosure management [...] "a purposeful intervention in the external financial reporting process, with the intent of obtaining some private gain." The ways that companies usually cook their books include recording revenues too soon, recording bogus revenues, boosting income with one time gains, shifting expenses and income forward and backward, failure to disclose liabilities and changing estimates such as bad debts, litigation costs, capital asset lives, and pension assumptions.¹⁸⁴

¹⁸³ PriceWaterhouseCoopers, 2005, 45% of companies worldwide are victims of economic crime, survey finds total losses of more than US\$2 billion; PriceWaterhouseCoopers finds 50% more companies report financial losses since 2003, New York/London: PricewaterhouseCoopers, 29 November, pp 2-3 of pp 6.

¹⁸⁴ Davin, T. (2001): The Line Between Managed Earnings and Fraud, Massachusetts. Bridgewater State College, page 1 of 8.
<http://webhost.bridge.edu/af/managed%20earnings.pdf>

The international orthodoxy is that the more that it can be established that an entity or program being audited has strong systems of internal control and that these work well in practice (as confirmed by some tests of internal controls), then the less will be the need to sample large numbers of transactions.¹⁸⁵ For example, after experimentation with various approaches in reducing Value Added Tax fraud by small traders, the UK authorities developed a system in which VAT-assessment staff, working in teams at local level, "sift" and select firms to be audited on the basis of initial site visits to traders, preliminary interviews and a check of available records.¹⁸⁶ Those firms that appear to present a higher risk are passed on for formal audit – whilst those who appear not to present such high risk are generally not VAT-audited in any given year (fewer than 5% of small traders). Such an approach, it is claimed, has increased revenue capture by focusing audit resources on higher risk traders¹⁸⁷. Similar "risk based" approaches may be used to selectively target audit resources within large programmes, for example EU audit, paying less attention to what on the face of things look like relatively well managed sectors and programmes, and focussing on areas in which financial management appears less robust.

One danger facing auditors is that smooth operators may be able to deflect exposure of bigger fraud risks. Certain audit procedures – particularly a degree of *randomisation* in audit enquiries – are designed to compensate for such risk.¹⁸⁸ However these seem not to have been 100% successful in recent international scandals (possibly because of the long-lasting and close relations between some private sector auditors and their clients, although that is a contentious area). It is possible that the flexibility that may be the mark of a good auditor in one audit situation may be his or her downfall in another. This limits the confidence that can be placed in audit-based estimation of economic frauds.

Given all their limitations, routine audits do sometimes uncover economic crime.

Allegations of corporate corruption received substantial media attention in 2003-04, but it was the Statoil-Horton affair that made the biggest headlines. State-owned Statoil is Norway's largest company. In June 2002 Statoil signed a 10-year, US \$15 million consulting agreement with Horton Investments to exploit Iran's oil and natural gas. Horton Investments, a company owned by exiled Iranian Abbas Yazdi, was also allegedly a financial intermediary for Mehdi Hashemi Rafsanjani, son of Iran's former president, director of the National Iranian Oil Company (NIOC) and an influential figure in the country's energy sector. In autumn 2002 Statoil was awarded operational control of South Pars, the world's largest offshore gas field, in partnership with a NIOC subsidiary. Statoil

¹⁸⁵ The authors comment that this orthodoxy holds up better in circumstances when higher management is not only robust but also honest than in some systemic cases of orchestrated fraud, when systems may function "well" to the detriment of auditors' ability to spot problems on the basis of the reduced sampling they may carry out in such circumstances. It is then that the "softer" side auditing including attention to culture becomes more important.

¹⁸⁶ Controller and Auditor General, National Audit Office, 1999, HM Customs and Excise: Improving VAT Assurance, London: Stationery Office, HC 15 Session 1999-00, 24 November, pp 61.

¹⁸⁷ Unfortunately, it has been difficult to set the balance right in the case of Missing Trader frauds, which have generated billions of euros in lost revenue and fraudulent claims.

¹⁸⁸ European Court of Auditors, Special report number 13/98 concerning the audit of the use of risk analysis techniques in customs control and the clearance of goods accompanied by the replies of the Commission (pursuant to Article 188c(4), second subparagraph, of the EC Treaty), Official Journal of the European Communities, (98/C 375/02), p 9 in pp 3-16.

<http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=OJ:C:1998:375:0003:0016:EN:PDF>

committed to spending US \$300 million to construct three production platforms and a pipeline. After completion, control of South Pars reverts to NIOC and Statoil will recover its project costs and a share of NIOC sales. In September 2003 Statoil's internal auditors reportedly questioned a US \$5.2 million payment to Horton Investments' account in the Turks and Caicos Islands, leading to an investigation by Økokrim, Norway's economic crime unit. Statoil's chairman Leif Terje Løddesøl and CEO Olav Fjell both resigned. Økokrim concluded that the payment was an offer of improper advantages in return for influence in securing the Iran deal. In June 2004 Økokrim issued penalty notices against Statoil and the former director of its international department, Richard Hubbard. A NOK 20 million (US \$2.9 million) fine was imposed on Statoil.¹⁸⁹

In addition, targeted audits, done on the basis of preliminary risk assessments, can yield valuable information. The Swedish Economic Crime Bureau has been following up auditors' reports of suspected false accounting. Preliminary results indicated that (Op cit, p 90):

Since the autumn of 2002, EBM [the Swedish Economic Crime Bureau] has conducted a project to uncover economic crime as soon as possible using the Swedish Companies Registration Office's information about such delinquent businesses. Since newly started companies are traditionally in the risk zone in terms of serving as tools of economic crime, the project places them at center stage. Given that the Companies Act requires accountants to report suspected illegal activities, the effort also examines their actions with regard to the businesses involved. The project was limited to 82 reports of suspected false accounting. [Findings:] In 15 cases, annual reports were subsequently submitted and no pretrial investigations were launched. In 15 cases, pretrial investigations of other suspected offences were already under way. Of the remaining 52 reports, 23 people were deemed to be engaged in serious economic crime. Seven judgments have been handed down so far, all convictions. A total of 49 companies have declared bankruptcy. The project will be fully evaluated in 2004. It is already clear that the working methods and cooperation have proven successful, allowing crime to be discovered and prosecuted at a very early stage. That is extremely important from the point of view of prevention, even increasing the likelihood of tripping up crime while it is still in progress.

It is only relatively recently that some EU Member States took effective steps to rein in frauds against the Common Agricultural Policy (CAP). A 2002 report by the UK's found that:

On 11 October 2000, a farmer, Joseph Bowden, was sentenced at Exeter Crown Court to 30 months imprisonment. He had pleaded guilty to nine criminal charges involving deception, attempted deception and false accounting. A further three charges were ordered to be left on the court's file and not guilty verdicts were directed by the judge to be entered for the remaining six charges. The charges related to claims under three European Union schemes, false insurance claims and arson. The amount of money involved in the charges to which Joseph Bowden pleaded guilty was £157,000, although he succeeded in all of his activities under the three schemes he might have received some £415,000 of public monies. Joseph Bowden's case was one of the largest cases of fraud in the United Kingdom involving an individual claiming subsidy under Common Agricultural Policy schemes.¹⁹⁰

189 TI, 2005, op cit, p 180,

http://www.globalcorruptionreport.org/gcr2005/download/english/country_reports_k_z.pdf

190 Comptroller and Auditor General, 2002, agricultural fraud: the case of Joseph Bowden, report by the Comptroller and Auditor General, HC 615 Session 2001-2002: 22 February, London: Stationery Office, pp 6 of pp 29. http://www.nao.org.uk/publications/nao_reports/01-02/0102615.pdf

UK procedures have been tightened up since that time. However, given the scale of the CAP, it is surprising that Mr Bowden's case was amongst the biggest discovered. The Comptroller and Auditor General's report shows how slack had been the checking of the Ministry of Agriculture: no checks against the possibility that a person might be making multiple claims under different names; no checks on the possibility of claims for more than one type of crop being grown at the same time in the same area (different crops being inspected by different inspectors, who did not liaise); claims seemingly being accepted on face value, without being subjected to any "higher level reasonableness" checks (for example whether claims are reasonable in relation to farm area or types).¹⁹¹ In other areas of commerce, these sorts of risks would be taken advantage of, and there is no reason to expect country folk to be particular slow. Therefore the UK's blissful ignorance of widespread agricultural frauds might not necessarily be regarded as reassuring.

In July 2004, tobacco manufacture Philip Morris International agreed a settlement¹⁹² with the European Union under which it pays approximately 1 billion euros over 12 years, to be used by the EU to support action against cigarette smuggling and counterfeiting.¹⁹³

In exchange, the Commission and ten Member States (Belgium, Finland, France, Germany, Greece, Italy, Luxembourg, Netherlands, Portugal and Spain) agreed to put an end to all litigation with Philip Morris relating to smuggled cigarettes. One case seeking damages due to lost duties had been dismissed by a US court on the grounds that US law did not allow the courts to gather duty for other governments. However a second action concerning alleged laundering of the proceeds of cigarette sales was looking more promising or promising, depending on the point of view.¹⁹⁴ Part of the pressure upon the tobacco industry to settle derived from contextual circumstances, for example inclusion in the allegations of claims of linkage between tobacco smuggling and tourism, which took on renewed significance in the post-2001 context.

The agreement reached provides for the establishment of a long-term mechanism in order to prevent any large-scale smuggling of genuine Philip Morris cigarettes in the European market. Philip Morris undertook to monitor customers, to enhance its capabilities to track and trace packaging and to provide support to European law enforcement. Philip Morris also agreed to limit its sales to volumes commensurate with legitimate market demand. Part of the EU case had been evidence that cigarette shipped to certain countries were far in excess of national demand in those countries. Philip Morris undertook make additional payments (separate to the 1.25 billion US dollars) if its genuine products are seized above pre-defined quantities.

191 Comptroller and Auditor General, op cit, p 2.

192 Anti-contraband and anti-counterfeit agreement and general release dated as of July 9, 2004 among Philip Morris International Inc [and associated companies] and the European Community represented by the European Commission

and each Member State listed on the signature pages hereto, Brussels: European Commission. http://europa.eu.int/comm/anti_fraud/budget/agreement.pdf

193 Euractive, 2004, Philip Morris to pay a record amount to prevent further litigation by EU, Euractive, <http://www.euractiv.com/Article?cムuri=tcm:29-128615-16&type=News>

194 Basler, A (2004): Cigarettes, smuggling, and terror: the European Community v R J Reynolds, Chicago-Kent Journal of International and Comparative Law, volume 4, Spring, pp 20. <http://www.kentlaw.edu/jicl/articles/spring2004/CigSmugArticleII.pdf>

3.13 REGULATORY ACTIONS AGAINST ECONOMIC CRIME

Regulators see perpetrators through the lens of regulation (naturally enough), that is to say, as people, partnerships, firms or consortia that have taken advantage of opportunities for crime presented by gaps or malfunctions in regulatory regimes.

It is commonly acknowledged that, within licit markets, criminal opportunities may be of three types – gaps in regulation (“regulatory holes”); inappropriate regulation (e.g. too vague, too onerous or regulation that inadvertently increases criminal opportunities); and opening up of new opportunities arising from displacement of irregular and criminal activities from areas in which effective regulation has been introduced.

However, this does not mean that regulators perceive criminal “types” corresponding to regulatory features. Quite the contrary, the same people or firms may be found taking advantage of each of these types of opportunities, successively. For example, perpetrators may first be found first exploiting a regulatory gap, then, as regulation is introduced, taking advantage of any vagueness, areas of wide discretion or lack of effective enforcement mechanisms and, finally, after regulation has been tightened up, moving on to pastures new. The regulatory environment shapes the behaviour.

This is well illustrated by research, conducted from a regulatory-compliance perspective, on major business frauds in Europe, East and West. In the early days of creation of markets in many ex-communist countries in Central and Eastern Europe and Russia, protection of ownership rights was not very highly developed, making it possible for dominant shareholders to further increase their stakes in and control of the new enterprises, freezing out wider ownership. In the crudest and most direct forms of misappropriation approach, minority owners in newly privatised firms were prevailed upon by other dominant shareholders and/or by officials acting in concert with them to sell up at discount to probable market value, increasing the stake of dominant shareholders. Slightly more sophisticated were dilutions, in which dominant shareholders – or who lacked a controlling share in terms of the shareholders’ register but did have influence with officials – arranged for those firms to issue new shares, and to take control of those shares, without any right of minority shareholders to bid. This dilution of the stakes of minority shareholders was made possible by lack of specific regulatory safeguards in new market countries:

Freeze-outs generally take place via dilution of minority ownership, with a subsequent buyout of shares at a low price. Depending on the degree of legal protection, a buyout can generate entirely different outcomes for minority shareholders. In the United States, DeAngelo et al. (1984) document average premiums in going-private transactions of more than 50% *above* share market equity value. [However] In the early stages of the Bulgarian market, minority shareholders were often frozen out at huge discounts (70-80%) to the intrinsic value of their shares.¹⁹⁵

Such freezing-out and dilution of value has been termed “financial tunnelling”, suggesting the underhand removal of value. Eventually it was curtailed in several eastern European countries, for example by Bulgaria in 2002, by regulatory changes specifically designed to protect the interest of minority owners (hence also to protect

¹⁹⁵ Atanasov, V / Ciccotello, C / Gyoshev, S (January 2005): "How Does Law Affect Finance? An Empirical Examination of Tunnelling in an Emerging Market" . William Davidson Institute Working Paper No. 742, p 4 of pp 35. <http://ssrn.com/abstract=670362>

markets, economic rights and equitable social development). As the new controls took hold, predatory behaviour by controlling interests in financial enterprises shifted. "Tunnelling", the transfer of value, was then done through the day-to-day operational trading activities of enterprises.

The 2002 changes in Bulgarian securities law dealt quite successfully with freeze-outs and dilution—two effective methods of financial tunnelling. However, the law did not address the second and more widespread form of tunnelling, which is operational tunnelling or what Johnson et al. (2000) label "self-dealing." One of the most common methods of operational tunnelling is through transfer pricing and other related-party transactions. Anecdotal evidence suggests that transfer-pricing tunnelling mechanisms became more prevalent after the legal changes in 2001. [...] Operational tunnelling thus has two effects. The first is to reduce the taxable income of the Bulgarian firm, thereby reducing the income tax due. The second effect is to reduce the wealth of minority owners and tunnel this wealth into the hands of the majority shareholder. It is important to note that in the case of operational tunnelling, the government tax authorities have exactly the same interests as the minority shareholders.¹⁹⁶

Similar problems came to light in many other post-privatisation situations, for example in the Czech Republic¹⁹⁷.

The Czech police have recently announced that they have charged two men with fraud. Viktor Kozeny who has been nicknamed "pirate of Prague" and his business partner Boris Vostry, are accused of having left the state with billions of Czech crowns acquired from small shareholders through deception during the privatisation process in the 1990's. Both men reject the accusations. They now live in Central America, and attempts by the police and state prosecution to bring them to trial have failed so far. The recent decision to charge them with fraud and prosecute them as fugitives has brought fresh hope to Czechs that the state is taking an active stance against fraud, and other economic crimes. In the 1990's when the government of Vaclav Klaus began the privatisation process, Czechs were introduced to two new terms; the coupon privatisation and tunnelling, through which ordinary Czechs but mainly the state have lost substantial amounts of money.¹⁹⁸

Though the particular conditions may have enabled it to flourish there, operational tunnelling and transfers of value without the knowledge of minority shareholders is by no means restricted to eastern Europe – it is a risk in any firm in which there is a highly centralised system of command and control. For example:

Parmalat is the paradigmatic fraud for Europe (just as Enron and WorldCom are the representative frauds in the United States). Parmalat's fraud essentially involved the balance sheet, not the income statement. It failed when a 3.9 billion euros account with Bank of America proved to be fictitious. At least, \$17.4 billion in assets seemed to vanish from its balance sheet. Efforts by its trustee to track down these missing funds appear to have found that at least 2.3 billion euros were paid to affiliated persons and shareholders. In short, private benefits appear to have siphoned off to controlling shareholders through

¹⁹⁶ Atanasov op cit pp 13 & 14.

¹⁹⁷ For a good review, see Scheinost, M. and Baloun, V. (2003): Financial crime in the Czech Republic: its features and international extension. In: van Duyne, P.C., von Lampe, K., Newell, J.L. (eds.), Criminal finances and Organising crime in Europe. Wolf Legal Publishers, Nijmegen, pp.133-146

¹⁹⁸ Asiedu, D (2003): Economic crime – tunnelling, Radio Praha, news item, 4 August <http://www.radio.cz/en/article/43700>

related party transactions. [...] this was a scandal that had continued for many years, probably for over a decade.¹⁹⁹

Circumstances that permit such market abuses are a controlling stake (private equity, public equity with inter-linked share ownership groups, for example family firms) and/or regulatory gaps or weaknesses placing inadequate constraints on owners and managers market behaviour. Such conditions still exist in some other European countries.

The fall of Ahold sent shock waves through the corporate governance landscape. The family used Dutch corporate law and a small blockholding to control Ahold with a dispersed ownership structure. The transition to professional management in 1989 left Ahold with dispersed shareholders but no major blockholder. When professional management raised capital from institutional investors, management denied them their voting rights by exploiting regulations that allow Dutch companies to issue non-voting certificates rather than voting shares. Thus, blockholders were not able to supplant the role of the family as a monitor of professional management. With a dispersed ownership structure and weak minority rights, management was unconstrained.[...] Our evidence is particularly relevant to Europe where a common characteristic of firms is their majority and/or family control structure without blockholder monitoring or disciplining by the market for corporate control.²⁰⁰

Criminal charges were laid by Dutch prosecutors in 2004. Similarly, in central and eastern Europe.

The Prague City Court on Thursday ruled on the biggest case of fraud in the country's history. The judge sent the founder of the bankrupt construction company H-system Petr Smetka to 12 years in prison for defrauding some 1,200 clients of 1.2 billion crowns - leaving them penniless and without a roof over their heads. The Prague courtroom was packed for the verdict. Several dozen people who had entrusted their lives savings to the bankrupt company came to see justice being done. It took the judge over eight hours to read the verdict containing the names of all the defrauded clients. The court sentenced the founder of the company Petr Smetka to twelve years in jail and three of his managers to nine and a half years each. All were found guilty of fraud, embezzlement and harming creditors. State attorney Boris Havel said that the manner in which the money had been siphoned off periodically from the outset and used for non-construction purposes suggested that this was a case of carefully planned fraud. The evidence presented also revealed that the H-system construction company failed to inform its clients and shareholders about its outstanding credits at Komercni Banka - to the tune of several million crowns. Right from the outset people were thus investing their money into a heavily indebted company.²⁰¹

The regulatory perspective throws up a particular paradox when it come to understanding impacts of economic crime: regulatory decisions and judicial settlements based on regulatory frameworks may increase the costs to those who have been wronged, or may place costs on third parties (bystanders). For example, fines

199 Coffee, J.: A Theory of corporate scandals: Why the U.S. and Europe differ, Columbia Law and Economics Working Paper 274, March, p 14 of pp 30, <http://ssrn.com/abstract=694581>

200 De Jong, A /DeJong, D / Mertens, G/ Roosenboom, P (2005): Royal Ahold: A failure of corporate governance, February, Brussels: ECGI Finance Working Paper 67/2005, p 4 of pp 55 http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID663504_code254274.pdf?abstractid=663504&mirid=3

201 Radio Praha, 2004, Court rules on H-system fraud (news item), reporter Daniela Lazarova, 20-02-2004, <http://www.radio.cz/en/article/50822>

which are placed upon corporate bodies, after discovery of earnings manipulation or other deceptive financial management and accounting methods, disadvantage the shareholders – those whose interests have already hurt – unless this encourages the latter to act more vigorously against management who committed the fraud. Even if the latter were to happen, it is moot whether this would have a significant deterrent effect on other managers in future.

Third party impacts also occur when national treasuries – and hence eventually tax payers – have to pay when a government agrees to compensation through national business investment protection schemes or international treaties. In 2003, after judgements given in The International Court of Arbitration of the International Chamber of Commerce based in Amsterdam and in other tribunals in London and Stockholm, ruling on bilateral investment treaties signed by the Czech Republic, that government agreed and paid compensation of 354.9 million US dollars (a sum in excess of the annual budget of the Czech Health Ministry) to a US investor.²⁰² The government acted promptly in order to restore international confidence in the country as a safe business environment and to safeguard its accession to the European Union. Previous actions attempted through the national media regulator and the domestic courts have come to little, possibly due to institutional weaknesses and the local partner's influence. By going through the international arbitration machinery, the international investor got satisfaction – but at whose cost?

A final political lesson of this curious case is that the broader Czech population literally paid the price for the expropriation. While scholars often argue that broader populations bear the costs of weak investor protections or institutions, this setting provides a more immediate example of the costs of weak institutions being borne by the broader population.²⁰³

These examples raise fundamental questions about impacts of economic crime. If some at least economic crimes are discovered and are addressed, and if restitution is made for damages, then who “picks up the tab”? Sometimes the perpetrator will to at least some extent, but typically third parties, such as shareholders or tax payers are more exposed.

Add to this the possibility that, occasionally, regulatory action or legal action may bring about the demise of a vulnerable entity – for example, collapse of market confidence in a company when its “dodgy” accounting methods are exposed, or implosion of an auditing firm such as Arthur Anderson in response to allegations that it destroyed evidence. In such case there are likely to be collateral damage to suppliers, customers, staff, etc. In ideal circumstances, regulatory action may discourage economic crime and may provide for restitution from the perpetrators to victims but, in other circumstances, it redistributes impacts of crime from immediate victims to other parties.

202 Desai, M/ Moel, A (2004): Czech Mate: Expropriation and Investor Protection in a Converging World. Harvard. December, pp 46, online version at SSRN: http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID585843_code57621.pdf?abstractid=585843&mirid=3

203 Desai et al, op cit, p 30.

3.14 BUSINESS AGAINST ECONOMIC CRIME

"Holding business managers accountable and changing the security staff's role from enforcement to service has been a major paradigm shift for the entire company." Security manager at a major equipment manufacturer.²⁰⁴

Risk reduction is seen as a dynamic (and continuing) process in which counter-measures are developed in response to the identification of risks – but only insofar as available counter-measures are seen as being worthwhile. According to leading authorities,²⁰⁵ the following process usually occurs: 1) identify assets and risks facing them, 2) attempt to assess the likelihood²⁰⁶ of such losses if no action is taken, 3) specify scale of possible losses, 4) attempt to assess the impacts of such losses – their "criticality" in business terms (e.g., fatal, highly disrupting, routine problem, etc), 5) identify options for reducing such risks, 6) assess the feasibility (practicability) of such counter-measures, 7) carry out a cost benefit analysis.²⁰⁷ Law enforcement threat assessments and audit risk assessments are likely to be drawn upon at various points in this process.

One endemic problem facing businesses is the undermining of their anti-crime and anti-corruption stance by an acceptance that some compromises are a "normal" part of business (see the many examples in preceding pages). This is by no means restricted to overseas markets or to employees in low positions. In Norway,

One in five business leaders say that corruption is, to a greater or lesser extent, part of the industry in which they work. One in ten business leaders in Norway say that they themselves have been offered gifts or money which could be viewed as an attempt at bribery or corruption.²⁰⁸

Whereas in some other countries, virtually all business leaders would say that corruption was "part of" their industry. What this implies is that, when corruption does emerge in an environment in which it is unexpected, it typically become front-page news.

Business perspectives on impacts of economic crime run from the well-known issue of music and film piracy, through industrial espionage or staff thefts, to bio-piracy and of course bribery. There is a huge range of issues and impacts and only some of them can be touched on here. On counterfeiting, much attention has been paid to music and film piracy but there are also some more basic counterfeiting issues.

204 Cited in GAO (1998): Executive Guide: Information Security Management, Learning From Leading Organizations, Washington. United States General Accounting Office. p 27 of 69

<http://www.cio.gov/archive/ai9868.pdf>

205 ASIS International Guidelines Commission, op cit. +++

206 Qualitative judgements of likelihood may be made in the first instance and then, in an intermediate step, these may be converted roughly into qualitative terms on the basis that "virtually Certain" might be assigned a numerical probability of 0.85, "highly probable" might be assigned 0.65, "moderately probable" 0.50 and "less probable" 0.20. (ASIS, op cit, page 21). Finally, for those risks looking most critical, focussed work might be undertaken to fine-tune probabilities.

207 Closely modelled on ASIS, op cit.

208 Gjensidige (2004): Annual Report: We reflect the past as we embrace the future, Oslo. p 23 of pp 29.

<http://forsikring.gjensidigen.no/delta/portal/forsikring/ois/db/data/aarsrapport/vedlegg2004/Eng2004>

Fake food and drink products in Russia control up to 94% of the market in some sectors and their numbers are rising in others as authorities redouble efforts to fight back, says the country's consumer agency in a special interview with Angela Drujinina. Nadejda Nazina, vice-director of RosPotrebNadzor, the Russian Agency for Health and Consumer Rights, said her organisation seized food products worth RUB340 million (€9.6 million) last year. The agency also issued 30,000 orders to destroy counterfeit goods after inspecting 132,000 food industry associations and producers. Nazina said she believed the problem of counterfeit food products remained widespread in Russia, despite only making up small part of the whole industry. According to information from the Ministry of Internal Affairs the ratio of counterfeit products in some fields runs from 73 to 94% – making Russia one of the worst countries in the world for fake goods. In many Western nations, such as the UK or US, the quota of counterfeit products is about 10%. Russia's economic collapse in 1998, however, offered food fraud a much better home with the opportunity to fill empty shelves with cheap, counterfeit goods. Nazina highlighted condensed milk as a big culprit with producers often making cheaper versions using vegetable fats, yet still putting condensed milk on the label. Some even falsify factory identification codes on packs to try and escape safety authorities. Fake mineral water is also a big problem. Around three quarters of mineral water sold in Russia is thought to be fake, with counterfeit bottles even controlling half of the more developed Moscow market, despite regular checks by police.²⁰⁹

On counterfeiting of films, music and software, the International Intellectual Property Alliance has published figures based on trade sources that puts losses to these industries at 12,543.2 million US dollars for 2004.²¹⁰ The figures are based on (a) aggregating estimates by individual firms of sales of pirated copies of their products and then (b) pricing losses to industry on the basis that each pirate sale represents a lost opportunity for a full-price licit sale. This last step is highly questionable, since many and most probably most pirated sales would not have occurred had they been offered for sale the same price level as that of the licit goods. It follows that the aggregated financial estimates of losses may be several times over-stated, especially in poorer countries and poorer sectors of the population who do not have the means to afford the products²¹¹. Nevertheless, the volumes of illicit sales as estimated are considerable. The Alliance describes Ukraine as the "priority foreign country" for remedial action and Russia and Turkey as being on a "priority watch list".²¹² As for software piracy specifically, the Business Software Alliance²¹³ allocates losses to geographical zones as follows: US/Canada 23%, Western Europe 36%, Asia Pacific 53%, Middle East/Africa 56%, Latin America 63%, Eastern Europe 71%, Worldwide 36%.

209 cee-foodindustry.com, 2005, Russia crackdown as food fraud runs rife, 13 May, Novis (online marketing platform) <http://www.cee-foodindustry.com/news/news-ng.asp?id=59964-russia-crackdown-as>

210 International Intellectual Property Alliance, 2005, USTR 2005 "special 301" decisions: IIPA's 2004 final estimated trade losses due to copyright piracy, <http://www.iipa.com/pdf/IIPA%20USTR%202005%20Special%20301%20DECISIONS%20with%20revised%20BSA%20figures%20psb%20060405.pdf>

211 If differential prices are made depending on general affluence levels, grey market parallel trading would occur even in the absence of intellectual copyright violations.

212 Ibid.

213 Business Software Alliance (July 2004): First annual BSA and IDC global software piracy study, p 2 of pp 14. <http://www.bsa.org/>

Those data are described as “lobby fodder” in an industry commentary on them.²¹⁴ Indeed, the “data” created by trade associations is used to support positions in the often-contentious and internationally politicised process of defining ownership rights and mobilising enforcement mechanisms and actions. In 2005 the European Union debated various forms of software patent protection in which the interests of the providers of various bits of software “code” were balanced against the interests of various other firms who might wish their products to inter-operate with such code.²¹⁵ Depending on the outcomes of such political decision making, a particular product might or might not in future fit into the category of “pirate” and “losses” be attributed to its unlicensed reproduction. Similar considerations may apply to some natural resources (e.g., woodland and forestry), agriculture resources (e.g., plant varieties and seed-stocks) or products used to maintain health (e.g., herbs), including those which involve traditional practices and/ or already exist in nature, aspects of which may be isolated and presented for patenting.

3.15 ECONOMICS AND THE COSTS OF CRIME

Economic analysis has become a staple of government thinking on policy generally. In the field of crime, the main contribution has been on costs of crime. The analytic framework for costing frauds typically covers (a) not only those frauds that are discovered (including those that are discovered by the victims but not reported to authorities) but also, (b) all frauds that are not discovered (even by the victims – for example when money is siphoned off, or markets are manipulated, so as to illegally benefit a person or company, but this is done in such a way that no-one notices).

(a) In relation to the discovered frauds, even those that are quietly hushed up, investigation costs may arise within the defrauded company (e.g., costs of a company’s initial internal investigation and/or of contracted private security services; personnel costs regarding firing or settlement; contingency planning against publicity and reputational risks, possible system changes to put in place new safeguards; senior management time to manage these sensitive matters).

In discovered cases that defrauded entities decide to report to the public authority, there will be costs for the regulators, investigators (sometimes subcontracting private investigators or forensic experts), tribunals or courts concerned, and legal fees. Additionally, financial costs for the company will increase as things move into the public sphere. If steps for financial recovery are taken – either by the public authorities or by the defrauded parties through a civil (or joined) legal action – these will generate further costs (but see next paragraph). There may be costs of imprisonment.

Of course, any financial recoveries (administrative or criminal), if made, tend to offset other costs, as indeed do fines, to the extent that they are both ordered and collected. In some jurisdictions, it may be theoretically possible for the total “incomes” from these actions to approach, equal or even exceed the total costs (i.e., costs for all injured parties and for all those involved in pursuing the case). This could occur if all aspects of a fraud have been discovered, if recoveries are 100% successful, if fines exceed

²¹⁴ Leyden, J (2005): Software piracy down, but piracy losses up, The Registry (online IT trade magazine, Wednesday 18 May).

http://www.theregister.co.uk/2005/05/18/bsa_software_piracy_survey/

²¹⁵ Business Software Alliance (June 2005): Vote on CII Directive sends mixed signals – BSA urges European Parliament to vote for innovation and growth, Brussels: BSA, 20, p 1, <http://www.bsa.org/eupolicy/press/newsreleases/Vote-on-CII-Directive-Sends-Mixed-Signals.cfm>

investigation costs and if full restitution is made to all parties in proportion to their various losses and costs.

More commonly, however, not all losses are discovered, let alone thoroughly investigated and fully recovered (even though administrative/civil recovery is generally easier than criminal in major fraud cases). The typical upshot for discovered frauds is that the costs to the parties defrauded (be they public or private sector) and the costs of investigation and legal action (if any) are considerably greater than any incomes from recoveries or fines.

(b) Meanwhile, in undiscovered frauds, there is no prospect for recoveries or fines, so here the fraud losses remain unmitigated. The impacts may bear heavily on one or a small number of economic entities (e.g. fraudulent trading) or be spread across many parties (e.g., when financial traders act on inside information, disadvantaging other investors).

There are immense difficulties in making estimates covering all these aspects of discovered and undiscovered frauds. Estimating all the parameters and variables – ratio of discovered versus undiscovered frauds, proportion of discovered frauds that are reported, the costs that follow – is extremely challenging (a polite term for just about impossible). In practice, attempts to arrive at a global fraud estimate, across all public and private sectors, have simply brought together a rat-bag of sectoral and market estimates, which vary widely in their assumptions and methodologies (some being little more than “stick-your-finger-in-the-wind” estimates, others being produced by entities which have an interest in marketing various anti-fraud services). In other words, the headline figures may look impressive but the underlying elements are not.

One such compilation was made in 2000 by National Economic Research Associates (NERA) who, in a report for the UK Home Office, put the total at 13.8 billion pounds sterling, of which 10.3 billion were direct losses and the rest investigations, court proceedings, preventive measures and extra tax revenue required to offset the cost of welfare to low-income intervals. (This study was too ready to accept industry guesstimates of fraud, and did not attempt to offset incomes from fines and recoveries, but these would be a small part of the total picture.)

To the practical difficulties, one can add the observation that some of the “costs” may also, in a certain light, be regarded as benefits, for example the work created for private sector investigators and for public sector agencies – all of which also carry a portion of the infrastructure costs such as buildings, IT, specialist equipment etc that are part of the licit economy. Moreover, many of these activities result in tax being paid to the national authorities. It will be recalled that international standard approaches to estimating the size of the economy of a country include illicit as well as licit economic activities. Many of the studies on fraud losses, indeed on costs of crime generally, have been contracted for by governments who have a need to report to international bodies the total size of their national economies, including the illegal parts and also including the proportions of the budgets of law enforcement and justice systems that can be attributed to crime.

3.16 CONCLUSIONS

Economic crime accounts for a significant share of material and immaterial damage caused by crime in Europe. It reinforces the adverse economic and social impact of globalisation on European societies. It undermines the functioning of economic systems, in particular in central and eastern Europe. And it generates considerable concerns with regard to democracy and the rule of law throughout Europe. More generally, tax fraud and the importance of strengthening the tax base in order to afford government welfare services (including policing and criminal justice) emerged from some national reports and from discussions at the Council of Europe Economic crime Conference in Portugal (2005) as an important theme throughout Europe²¹⁶.

Economic crime and organised crime share many characteristics and follow a similar logic based on the pursuit of profits and the exploitation of the opportunities offered by markets, globalisation and asymmetric governance. With legal and illegal markets increasingly shading into each other, organised crime may be considered a sub-set of economic crime rather than a fully separate category of crime. An issue arising in this connection is whether the special techniques available to law enforcement for the investigation of organised crime should also be made available to investigate serious economic crime.

Economic crime levels are a reflection of (a) motivations and skills, and (b) opportunities, which are affected by governmental, media, and public vigilance. Thus, regulatory frameworks do have an impact on economic crime.

With regard to business leaders, it is important that corporate governance develops effective controls which question senior executives' conduct as well as that of people lower down the status scale. Further problems that need to be addressed are related to the vulnerability of civil servants and parliamentarians (at national and intergovernmental levels) to the buying of decisions regarding regulations that affect business interests. Crucial questions in this respect are:

- where are the boundaries between legitimate lobbying and undue influence and corruption?
- how can economic criminals be prevented from capturing democratic institutions and processes?

Many questionable businesspeople – whose fortunes are the result of shady operations (among others related to the privatisation process in eastern Europe) – have moved into the legal commercial sphere. European societies face the dilemma of whether to allow them to legitimise themselves or to try to exclude them. Either way involves risks.

In appraising strategic options, policy makers will need to keep in mind not only the amount of crime (however it is estimated) but also the specifics of its harmful consequences. These include systemic harms, harms to specific social groups, harms to individuals, enterprises, to customers and to the public at large – not just financial harms, but also harms to democracy, to the quality of life and to the sense of security. Because, as mentioned at the start of this chapter, globalisation advances apace but unevenly, and because its effects are experienced differently in specific regions, any “overall tendency” may have limited local applicability. Will western European tendencies towards improved corporate governance and risk management also flow

²¹⁶ It is also the source of some stresses over alleged partiality and “political motivation” in prosecutions, an issue in mutual legal assistance and extradition.

eastwards, reducing economic crime and attendant harm (or is that both overtly optimistic and too culturally blinkered an expectation)? Or will the less orderly aspects of eastern Europe's meeting of market economies and economic crime flow westwards (or is that to play to historical myths and to underestimate the robustness of more positive responses)? What is clear is that the currently mixed picture, with many local specifics as well as international linkages, will continue to evolve, and that these will be affected by international regulatory developments (such as the Sarbanes-Oxley legislation), regional developments in governance (notably EU company regulation and the convergence of audit rules) and shifts in economic opportunities (for example, the changes in the People's Republic of China).

There is certainly a European "convergence story" in terms of globalisation, markets and democratisation. There is also a convergence story in terms of pan-European and wider international cooperation against economic crime. However policy makers are aware of the danger of falling into the "mirroring" trap, whereby one assumes that one's enemy takes and will continue to take the same shape as oneself. There is no historical necessity for economic crime to take the shape of big actors characterised by ever-stronger mutual cooperation, global reach and stronger impacts. Indeed, given Council of Europe and other efforts, the opposite may yet be the more favourable outturn.

The challenges of globalisation and economic crime cannot be addressed by individual governments or countries alone but must be regulated at European and global levels. The Council of Europe can make an important contribution, as demonstrated with regard to cybercrime, money laundering and corruption. The findings of the Octopus Interface "Conference on Combating Economic Crime" (Portugal, September 2005) provide ample food for thought for further work of the Council of Europe in this field.²¹⁷

²¹⁷ See appendix.

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5 Appendix

5.1 THE "DARK FIGURE" OF ECONOMIC CRIME – SOME ANALYTICAL ISSUES

Practical experience and the specialist literature both suggest that information on economic crimes depends, firstly, on its *visibility* to those who are in a position to report it and, secondly, on the *inclination or disinclination to report*. One may also add the variable time lags before victims/regulators become aware of offences. Visibility is at least partly shaped by types of economic crime, as PricewaterhouseCoopers report:

With asset misappropriation and, product piracy, the perceived prevalence and actual incidence are very similar. This is likely to be due to their greater visibility: lost assets can be counted, counterfeit products seen in the market. However, with both financial misrepresentation and corruption & bribery, the perceived prevalence is much higher than the reported incidences.²¹⁸

Both visibility of economic crimes and inclination to report then are shaped by powerful social processes of economic competition (which motivates much whistleblowing), negotiation (when settlements involve agreement to release only limited information on an alleged fraud), victim self-preservation (including keeping quiet because of intimidation or in order to safeguard reputation and out of fear of loss of business), and collusion (when the apparently defrauded party calculates that they may have something positively to gain from the fraud, even though they did not plan it).

Information on economic crimes may be most difficult to access in the case of ambivalent and sometimes colluding responses to some economic crimes - for example, hurried and sloppy procurement processes, hand-outs and kick-backs, when these are compatible with market or political advantage; "insider" enrichment by state officials²¹⁹ or by private sector managers, where it may be less embarrassing to hush things up than to "wash dirty linen in public"; or evasion of international sanctions that is tolerated because it provides support for political allies. The information problem here is that denial can be strong. In some cases, important institutions such as national export guarantee agencies and international development banks may be unofficially tolerant of corruption, bribery and "skimming".²²⁰ Relatedly, an OECD report on the UK's implementation of anti-bribery machinery mused that, "given the size of the UK economy and its level of exports and outward FDI, along with its involvement in international business transactions in sectors and countries that are at high risk for corruption, it is surprising that no company or individual has been indicted or tried for the offence of bribing a foreign public official since the ratification of the Convention by the UK".²²¹

218 PricewaterhouseCoopers, 2003, Economic Crime Survey 2003, Zurich: PricewaterhouseCoopers, p 7 of pp 24,
http://www.pwcglobal.com/ch/ger/inssol/publ/cfr/download/pwc_global_ecocrimesurvey_2003_e.pdf

219 Leyendecker, H, 2003, Case study: oversized incinerator burns up Cologne's cash, in Transparency International, (ed), Global corruption report 2005: corruption in construction and post-conflict reconstruction, London: Pluto Press, pp 51-54.

220 Hawley, S, 2005, Financing corruption? The role of multilateral development banks and export guarantee agencies, in Transparency International, op cit, pp 55-70 and other chapters therein.

221 OECD, 2005, United Kingdom: phase 2 report on the application of the convention on combating bribery of foreign public officials in international business transactions and the 1997

Information may be moderately difficult to compile in relation to those economic crimes in which “outsiders” defraud victims (for example the EU, state services or the private sector), threatening their financial results or reputations, and there is no overriding cultural need to protect insiders – yet where a balance has to be struck between the costs of such economic crimes and the costs (financial and political) of detecting and reporting them. The information problem here is that suspicions may not be recorded in durable forms, let alone be reported to authorities. For companies, confidential surveys of the experiences of senior executives represent compensating information sources,²²² although there is no real equivalent for the public sector in most countries. (The UK Treasury conducts annual surveys of internal public sector fraud costs, including computer frauds, but these yield rather low figures; the Audit Commission conducts surveys of fraud against UK local authorities; and annual estimates are given of social security and other frauds: see Levi and Pithouse, forthcoming; National Audit Office; Audit Commission.)

Some sources suggest that, in spite of the embarrassment that can be triggered by reporting economic crime, private sector victims are more likely to make reports than the public sector, because the sense of ownership (and hence of loss) is greater in the private sector. Sweden’s National Economic Crime Bureau²²³ refers to

the way in which information about the types and scope of economic crime is spread. In the first place, such offences committed against the public sector are of a totally different character than traditional or economic crime whose victims are businesses, organizations or private individuals. When the public sector is the target, no individual suffers direct injury or loss. Only after a public official has taken some kind of monitoring measure – or an individual, business or organization has filed a report – are such offences detected. A much greater proportion of economic crimes committed against the public sector undoubtedly go unreported than is the case with those aimed at other victims. Nevertheless, various studies have shown that a relatively large percentage of such offences suffered by others than the public sector are also unreported, albeit not for the same reasons. For instance, businesses refrain from submitting reports for fear of losing their standing with customers, while financial institutions don’t want to let on that their monitoring procedures are inadequate.

Reporting obligations – for example to financial services regulators – may affect the volume known about, even though these are not necessarily reported to law enforcement bodies and may not be reported publicly even in aggregate form.

recommendation on combating bribery in international business transactions, Paris, OECD, Directorate for financial and enterprise affairs, p 8 of pp 83.

<http://www.oecd.org/dataoecd/62/32/34599062.pdf>

222 See for example PriceWaterhouseCoopers, 200x, Economic crime survey 2003, Global report [there are also regional versions], 24 pages,

<http://www.pwc.com/extweb/insights.nsf/docid/662DCF05C90F69E680256D6E0052125A>.

This asks about large companies’ experiences of “Fraud/Economic Crime”, defined as “The intentional use of deceit to deprive another of money, property or a legal right”. The most commonly mentioned problem was Asset misappropriation – theft of company assets including monetary assets/cash or supplies and equipment) by company directors, others (inc. embezzlement by employees) in fiduciary positions or an employee for their own benefit. Other problems were financial misrepresentation, corruption & bribery; money laundering; cybercrime [excluding misappropriations in which the use of electronic equipment was incidental]; industrial espionage & information brokerage; product piracy/counterfeiting copyright.

223 Swedish National Economic Crimes Bureau, 2004, ECONOMIC CRIME REPORT, Report no. 2004:1, reference no. 900 2003/0426, ISSN 1404-3521, p 8 of pp 140.

However no obligations to report can affect the reporting of frauds not identified as such.

Information may be easier to access, yet often challenging to assess, when it arises as allegations by aggrieved or indignant third parties, either market competitors or insiders who act as whistle-blowers. Even if European fraud-reporters may not be rewarded by sharing in the proceeds of civil recoveries from fraud, as they are in the United States, still there can be commercial, emotional or political rewards for blowing the whistle. The UK competition authorities have developed a scheme to encourage first-whistleblowers by immunising them from prosecution, though this has not proved easy to implement. The information problem here is how to "scale up" to the level of "actual" economic crimes. This entails estimating what proportion of all "actual" economic crimes may be represented by allegations.²²⁴

Information is most easily available in cases when all parties other than the fraudster have motivation to report and the benefits of reporting exceed the costs of not doing so. So for example credit card frauds lead to high level of reporting *to the companies themselves though not to the police*, since it is only mildly inconvenient to report, whilst the costs to cardholders of not doing so might be very high. However, the same logic does not apply to reporting of those same crimes to the authorities. The remaining information problem is that this is just one sector: there are no clear relations between this sector and others, so the information is hardly generalisable.

Summarising, the widely varying structural and cultural conditions in which economic crimes take place means that the quantity of information available on different types of economic crimes varies markedly. Hence the issues involved in characterising, estimating and/or counting economic crimes and their impacts are by no means purely technical; these difficulties have social origins.

DIVERSE INFORMATION SOURCES

Law enforcement agencies (henceforth LEAs), auditors, regulators and private sector entities have developed systems for collecting information on matters of concern to them, including economic crime. Each of these entities is concerned, in varying ways, with describing the risks posed by economic crime: LEAs typically go through annual risk assessment procedures and publish annual reports on crime risks (often called "threat assessments", see below), whilst auditors check the integrity of the internal management and financial controls of their audit clients and, where necessary, make recommendations for improvements. Making use of such "risk assessment" (descriptive) information, market regulators and private sector firms go one step further, to "risk reduction" (action)

²²⁴ The problems both of overestimates (false positives) and of underestimates arise quite acutely here: even if some allegations are false, some other frauds remain unreported.

Broad approaches to risk	<i>Look outwards at "others", environments and risks there</i>	<i>Looking inwards at "us", our values, investments and vulnerabilities</i>	<i>Synthesisers – and detractors</i>
Risk <u>assessment</u> (present & recent past)	[1] LEA risk assessments based on past data on their adversaries (sometimes critiqued as "mirror imaging" i.e. creating enemies in their own image) [3] Regulators' perspectives on markets, regulated bodies, professions	[2] Auditor fraud risk assessments of organisations' systems & cultures [4] Business (individual and collective industry bodies) & public entities' own fraud risk assessments	[5] Syntheses (eg post-2001 risk consultancies) versus [6] Critics of all risk "mentality" approaches (eg, attention to risk causes amplification).
Risk <u>reduction</u> (present & near future)			

Because the information systems of each of these entities differ – as do their purposes – so the perspectives and data generated also differ. That is healthy, in the sense that several perspectives may be better than only one. It means that we get the best overall view of the situation and its dynamics if we understand each type of information in its own terms, then see what general conclusions about economic crime may be drawn.

[1] European law enforcement agency organised crime assessment methodology as applied to organised crime and to economic crime has been influenced by its "older brother" of international and defence threat assessments, which evolved from assessments of nuclear and missile capabilities and intentions, potential for proliferation, "failed states", terrorism and now organised crime. In its plainest form, this approach says *risk = probability of adverse events, plus or x severity or harmfulness of impacts*. In the classical approach, calculating the "probability" part of this equation may involve making judgements about "intent" ("desire" × "confidence"), and about "capability" ("resources" × "knowledge") [see main text below]. Furthermore there are conceptually and practically unresolved issues around impact severity. It is not surprising that LEAs struggle to apply such an approach. In practice, some LEAs assessments of organised crime tend to fall back on official statistics on detected/recorded serious crimes, with a narrative commentary, though some Member States put substantial effort into calculating how many organised crime groups there are - a particularly difficult thing to do when one has to break up networked relationships into "organised group" components – and any dynamic changes in what they are getting involved in. (The latter is difficult to summarise where some groups/individuals are getting involved in new things and others are not.)

[2] Auditors, somewhat by contrast, focus less on external threats and more on sources of value and investment that are *internal* to the public or private bodies being audited. They check for shortcomings in management and financial controls, in corporate cultures and in day-to-day operations that might open up vulnerabilities to attack (whether originating from inside or outside). The auditing model may be summarised as *risk = vulnerability of internal assets (even if no-one is known to be targeting/threatening those assets), plus or x the values of those assets*. Risk assessments of auditors are rather easier than those of LEAs, partly because auditors focus on specific economic entities or at least on delineated financial programmes, within which they can assess specific cultures, control systems, etc. This facilitates relatively tight assessments of risks (though as successive financial scandals in audited companies show, they may not see the wood for the trees).

Two other approaches are primarily orientated towards sources of risk that are currently emerging or might do over the next few years, and the mitigation of such

risks. Of these, [3] regulatory bodies, supervisors, consultants and social scientists typically scan vulnerabilities in markets and other environments, including those that would favour fraud, other serious economic crime and/or terrorism. Sometimes the concern here is not so much with individual events that might be serious or fatal for particular entities but rather with systemic risk that might damage the whole. Typically these approaches involve looking at the balance between, on the other hand, any incentives for non-compliance (including lack of knowledge of rules, or their complexity or perceived onerous nature) against, on the other hand, the incentives for compliance provided by those rules and their enforcement. In their simplest form: *risk = perceived regulatory burden, minus (or divided by) regulatory sanction likelihood and impacts.*

[4] In the business or corporate approach, risk assessment *per se* is less of interest than risk-reduction, taking place within an active and continuous process of risk-management. The objective is to block those risks that might be most business-critical in the sense of survival of the enterprise or public body, focussing primarily upon those preventive actions that cost less than the assets they seek to safeguard. Here, *cost-effectiveness (proportionality, merit) of specific risk reduction activities = their potential for reducing values of assets exposed to risk, minus or divided by the costs of the safeguards*. From this perspective, some large or even catastrophic risks may be either impossible to forestall, or the effective counter-measures may be so expensive, that action is not cost effective, and so those remaining risks may be accepted. Here, the division between ownership and control of the business can be important – especially in a high mobility, performance bonus culture, the interests of management personally may be more short-term than those of investors/owners, so costly measures that might prevent a long-term risk may be neglected.

In summary, whilst neither law enforcement, auditing, regulatory, businesses or other sources provide an adequate window on economic crimes in Europe, taken together they can provide some purchase on vital questions of risk, harm, dynamics and management.

5.2 OCTOPUS INTERFACE: SUMMING UP OF DISCUSSIONS (CASCAIS, SEPTEMBER 2005)

CONFERENCE ON COMBATING ECONOMIC CRIME

Cascais, Portugal, 28-30 September 2005

1. More than 250 public and private sector experts from some 50 countries and a wide range of institutions met in Cascais, Portugal, from 28-30 September 2005 to review measures against economic crime. The conference was organised jointly by the Ministry of Justice of Portugal and the Council of Europe within the framework of the Portuguese presidency of the Committee of Ministers and under the Octopus Programme of the Council of Europe. Plenary and workshops discussions resulted in the following:
2. Participants in the conference underlined that economic and financial crimes, mainly in an organised manner, are a threat to democracy, the rule of law and human rights: values which the Council of Europe has been defending throughout the continent for over 50 years. Economic crime is also a threat to fair competition and social and economic progress. Market economy can work effectively only if "the rules of the game" are fully respected.
3. In the context of globalisation, the regulatory framework – the rules of the game – needs to be strengthened at European and international levels. Thus, action to prevent and combat effectively all forms of economic crime must be increasingly international. This was clearly stated at the highest political level by the Heads of State and Government of the Council of Europe at their 3rd Summit in Warsaw, in May 2005.
4. As economic crime keeps evolving, the public response must be proportional to the seriousness of the problem, timely and efficient. Further delays by public authorities and the private sector in putting in place preventive and control measures should be avoided.
5. Measures against economic crime must not only be practical and efficient but also cost-effective.
6. Given the reported impact of economic crime on democracy, the risks to democracy should be further examined. This includes such issues as the financing of political parties and electoral campaigns, the boundaries between legitimate lobbying and undue influence and corruption, and the capturing of democratic processes and institutions by economic criminals.
7. Progress has been made to prevent and combat all forms of economic crime over the last 15 years. A number of instruments are available which already provide a sound basis for effective international co-operation. Participants recalled the importance for States to sign, ratify and/or implement effectively without delay relevant international instruments (including EU texts) and Council of Europe's treaties, such as the Criminal and Civil Law Conventions on Corruption, the Convention on Cybercrime, the Protocol Amending the 1977 European Convention on the Suppression of Terrorism, and the conventions opened for signature in May 2005, namely, the Council of Europe Convention on the Prevention of Terrorism, the Council of Europe Convention on Trafficking in Human Beings and the Council of Europe

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

8. It is important that the implementation of these norms is effectively evaluated through existing monitoring mechanisms, such as the Group of States against Corruption (GRECO), MONEYVAL (which evaluates the anti-money laundering and anti-terrorist financing measures of the Council of Europe member States which are not members of the FATF) of the Council of Europe, the FATF and the OECD.

9. Economic crime is one of the main fields of organised criminals in Europe and, in terms of proceeds generated and material damage caused, is considered the most important activity of organised crime. Organised criminal groups diversify their activities combining predatory and "traditional" organised crimes with economic, financial and high-tech crimes. Activities include drug trafficking, smuggling of persons, trafficking in human beings, arms trafficking, extortion, corruption, cybercrime, financing of terrorism, money laundering, fraud, counterfeiting, including of health-care products, insider trading, misuse or manipulation of stock market products, tax evasion, misuse of official position, and others.

10. Raising public awareness and educating not only the public in general but all public and private stakeholders regarding the dangers of economic crime is of crucial importance. Institutions and individuals alike need to react against economic and organised crime.

11. Participants stressed the importance of going further and to strengthen international action against economic crime. This action could follow four main pillars:

I. Concept, definition and analysis of economic crime

12. There is a need for harmonised reporting on economic crime by European countries to allow the identification of key threats and of common countermeasures at the international level. In the absence of other agreed upon definitions, Recommendation R(81)12 on Economic Crime can still provide guidance to uniform reporting on economic crime. The Recommendation lists 16 offences which are considered economic crimes if they have an impact – beyond individual victims – on society and the state in general and on the functioning of economic systems.

13. Information available suggests that there are actual and perceived increases in economic crime. This is reflected, among other things, in the number of cases detected by law enforcement authorities and the number of companies that report to be victims of economic crime.

14. Understanding the phenomenon of economic crime is a prerequisite for devising appropriate counter-measures. However, there are still considerable difficulties when attempting to analyse the extent and impact of economic crime. It is therefore necessary to collect data, develop statistics, establish trends and analyse threats on a more systematic basis using information from public and private sector sources. Situation reports should be prepared regularly to permit an evaluation of emerging developments of economic crime and to respond to threats with the most appropriate criminal justice policy.

II. Possible national and international countermeasures

15. Although much progress has been made, participants indicated that economic crime is "doing well" and that additional efforts are required. A number of areas of action have been identified. These may include, but are not limited to:

a. Prevention

- i. Stepping up of efforts to prevent economic crimes should be a matter of high priority for European governments;
- ii. Supervisors and regulators of financial services should play a more active preventive role. The same applies to the supervision or inspection authorities of non-financial business and activities/professions;
- iii. Assessments of risks are required in respect to bodies providing state aid to the private sector;
- iv. A combination of external and internal audit should be pursued;
- v. Auditors should be authorised to check the "end users";
- vi. Raise awareness and educate the public on the threats and dangers of economic crimes (pedagogical exercise);
- vii. The identification of clients and beneficial owners of banking accounts and corporations, trusts or other legal arrangements is important;
- viii. An "alert system" of exchange of information should be set up, providing spontaneous information;
- ix. Information transmitted should be preserved for a certain period of time (e.g. 5 years);
- x. Effective measures should be taken against non co-operative countries and territories which would have preventive effects on all forms of economic crime.
- xi. Particular measures need to be taken against activities involving off-shore and shell companies which do not serve legitimate purposes and which are criminogenic;
- xii. The (mis)use of stock exchange products to hide dubious or illegal transactions should be thoroughly studied;

b. Corporate ethics and corporate governance

- i. The common denominator of recent financial scandals has been the lack of control by managing boards and a lack of balance among different organs of a company (including conflicts of interest and a lack of independence of auditors). Risk management functions of boards should be expanded, and boards should be directly responsible for the adequacy of internal controls;
- ii. The penalties for altering or destroying financial records should be increased;
- iii. The need to set up rules to avoid retaliation against companies' whistleblowers and the possibility to set up an anonymous system for complaints within companies should be considered;
- iv. The crucial importance of training of staff working in companies, as well as of professionals susceptible to encounter economic crimes, has been noted;
- v. Corporate governance needs to be improved in order to better detect crime within a corporate structure and prevent criminal behaviour by corporate agents;
- vi. The implementation of a culture of ethics within companies is essential;

- vii. Other measures at company level may include:
- Enhancing corporate governance disclosure (annual corporate governance statements, information on role of institutional investors)
 - Strengthening of shareholder's rights (access to information, "shareholder democracy")
 - Modernising boards of directors
 - Democratic principles (in particular transparency and accountability);
 - Regular monitoring within companies of the effectiveness of the measures taken;

c. ***Public-private partnerships***

- i. Public-private partnerships to prevent and combat economic crime should be strengthened and based on practical approaches;
- ii. The private sector should be made aware of the dangers posed by economic crime to their business and to fair competition;
- iii. Grounds for action include (i) risk management (in order to avoid sanctions, loss of reputation, internal crime), (ii) competition (criminal organisations hinder competition) and (iii) social responsibility (to respond to stakeholder concerns);
- iv. Trade association, supervisory authorities and law enforcement should work together to prevent and combat economic crime;
- v. There should be a "two-way" system of co-operation and information exchange between public and private sectors;
- vi. Opportunities and platforms should be created for public-private partnerships; these should also include local authorities and local elected officials;

d. ***Legislative, enforcement and criminal justice measures***

- vii. Money is the common denominator of all economic and organised crime. Law enforcement and criminal justice should therefore give priority to the search, seizure and confiscation of proceeds. Financial investigations should be carried out systematically when a criminal investigation into economic crime is launched;
- viii. The question of shell companies and their bank and other accounts should be addressed seriously and effectively;
- ix. The role of financial intermediaries should be carefully examined as they may constitute the "nod" where shell companies and bank and other accounts "meet" to create illicit financial constructions;
- x. Co-operation between all national authorities and agencies responsible for fighting economic crime should be strengthened;
- xi. Predicate offences to money laundering should be harmonised;
- xii. The problem caused by delaying tactics in national judicial procedures, as well as by bank secrecy, still present in a number of countries, should be addressed;
- xiii. The effectiveness of multidisciplinary and joint investigative teams has been underlined;
- xiv. The need for transparency of financial transactions and constructions and the need to avoid conflicts of interest in decision-making processes, has been pointed out;

- xv. The use of special investigative techniques should be improved and permitted to combat all forms of economic crime;
- xvi. Various programmes and measures should be set up to protect witnesses, collaborators of justice, victims and whistleblowers;
- xvii. Corporations and other legal persons should be held liable for economic crimes. Provisions in this respect should be introduced into criminal or administrative law where they do not yet exist;
- xviii. The need for judges and prosecutors to be highly specialised has been pointed out. Some participants suggested the creation of "specialised courts";
- xix. In order to prevent the use of counterfeited or stolen identity documents, a coherent ID documents chain approach should be introduced at national level;
- xx. There should be a centralised issuing procedure for ID and other documents;
- xxi. Further measures to facilitate financial investigations, measures against tax evasion, and international co-operation include:
 - Centralisation of bank accounts and registration of money transfers;
 - Limitation of the possibility of appeals for account holders against transmission of information by judicial authorities;
 - Identification of beneficial owners of accounts abroad, be them in banks or in other financial institutions;
- xxii. Civil, administrative and criminal law provide for measures against economic crime at different levels and by different bodies. However, there is a risk that different measures conflict with each other and hinder action. Interagency co-operation should therefore be strengthened to overcome such problems and build up synergies;
- xxiii. Complex regulations hinder effective measures against economic crime and create new gaps and loopholes. Over-regulation should be avoided. Legislation against economic crime should be simplified and its enforcement be made more efficient;

e. *International co-operation*

- i. International co-operation should be more rapid and effective. There should be no country slowing down or refusing co-operation to combat economic crime;
- ii. All those involved in measures against economic crime – and in particular judges, prosecutors and police officers – should familiarise themselves and make best possible use of already existing tools provided for by international treaties and agreements as well as of structures facilitating co-operation;
- iii. All obstacles to effective international co-operation, such as fiscal exception, should be eliminated;
- iv. Direct co-operation between judicial authorities, as well as between Financial Intelligence Units (FIUs), should be strengthened;
- v. The principle of mutual recognition of judgements should become effective throughout Council of Europe member States;
- vi. The actions undertaken by various national stock exchange commissions and other supervisory authorities should be co-ordinated in cases involving transnational financial and business transactions;
- vii. There should be a better exchange of information and co-operation between national stock exchange commissions or other supervisory authorities;

- viii. Tax evasion is considered a major issue in many countries not only as an economic problem but also as a problem of social justice and cohesion. The possibility for companies to open accounts in different countries and transfer funds around the globe facilitates legal and illegal tax evasion. At the same time, fiscal co-operation among countries remains difficult. Fiscal exception to international co-operation should be withdrawn. Broad ratification of the Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters (ETS 127) would further facilitate co-operation;
- ix. A system to enable co-ordinated control over the tax situation of a person in various countries should be created;
- x. With regard to identity documents, national/regional/international database of lost or stolen IDs should be linked ("Global Electronic Data Interchange");
- xi. Co-operation and interaction between relevant international institutions and between those institutions and member States, should be strengthened: the European Union, the Organisation for Economic Co-operation and Development (OECD) and the Council of Europe should work together to avoid an inflation of legislation, to concentrate on their respective areas of expertise and to target action where really needed.

16. Participants also noted with interest the proposal to draft a new Council of Europe convention to combat pharmaceutical/health-care crimes, made at a seminar on counterfeit medicines which took place at the Council of Europe in September 2005. They recognised the major danger to public health caused by illegally produced pharmaceutical/heath-care products and the importance for the Council of Europe to act urgently.

17. Moreover, other instruments (e.g. Convention on Insider Trading, Mutual Legal Assistance in Tax Matters, Recommendation R(81)12 on Economic Crime) should be examined and if necessary, member States should be encouraged again to proceed with their full implementation. Such a review may also result in proposals for new instruments.

III. Monitoring

18. Drafting international norms is not sufficient. They should be effectively implemented. To ensure proper implementation of international treaties by States, GRECO, MONEYVAL, the FATF, the OECD and other relevant monitoring systems should pursue and strengthen their work.

19. These monitoring systems should function hand in hand with other international monitoring mechanisms to avoid duplication and maximise effectiveness.

IV. Capacity building

20. The participants recognised the major role played by the Council of Europe in implementing regional and bilateral technical co-operation programmes to build capacities against economic crime. Due to these programmes, numerous countries have made major steps ahead in their (legal, political and technical) capacity against this scourge.

21. These programmes, often financed by the European Union and implemented by the Council of Europe, serve to build the necessary legal and institutional framework to prevent and combat economic crime in certain countries/regions. They are also

Appendix

essential to train the professionals involved (e.g. judges, lawyers, prosecutors, police, penitentiary personnel, etc.) in using relevant regulations in the most effective manner.

22. Such programmes should also be used to document good practices against economic crime and share them amongst practitioners.

23. These programmes should be result-oriented and their impact evaluated. Such evaluation needs to take place against relevant international standards, such as those of the Council of Europe, of the EU, of the OECD, of the OSCE, of the FATF and of the UN.

* * *

24. The participants encouraged all stakeholders (States, international institutions, private sectors representatives, the public at large) to take advantage of these areas of action and address them in partnership and in the light of their respective competence and expertise. An information document on the way the above areas have been addressed could be made available at the 2006 Conference of European Ministers of Justice of the Council of Europe.

Cascais, 30 September 2005

5.3 RESUME DU RAPPORT DE SITUATION 2005



Conseil de l'Europe
Programme Octopus

Résumé du Rapport de situation 2005 sur la criminalité organisée

La menace de la criminalité économique

Strasbourg, Décembre 2005

Contexte et objet du rapport

La criminalité organisée, la corruption et les autres formes d'infractions économiques et graves resteront dans les années à venir des préoccupations prioritaires pour les sociétés européennes.

C'est pourquoi les chefs d'Etat et de gouvernement qui ont participé au 3^{ème} sommet du Conseil de l'Europe (Varsovie, 16 - 17 mai 2005) ont exprimé leur détermination " à garantir la sécurité de nos citoyens dans le plein respect des Droits de l'Homme et des libertés fondamentales" et ont chargé le Conseil de l'Europe de "développer encore ses activités dans le combat contre la corruption, le crime organisé - y compris le blanchiment d'argent et la délinquance financière -, la traite des êtres humains, la cybercriminalité et les défis inhérents aux progrès de la science et de la technique".

L'objet du rapport de situation 2005 sur la criminalité organisée est:

- De signaler les nouvelles menaces et les principaux sujets de préoccupation
- D'aider les responsables en Europe à prendre des décisions en meilleure connaissance de cause dans le domaine des politiques anti-criminelles.

Le rapport 2005 contient un chapitre thématique sur la question de la criminalité économique. Comme l'indiquait déjà le rapport de 2004, un nombre croissant de pays classe la criminalité économique sous la rubrique « Criminalité organisée ». D'assez fortes corrélations existent entre ces deux types de criminalité qui ont des caractéristiques communes. En outre, étant donné les graves conséquences de la criminalité économique sur les sociétés européennes, porter une attention sur ce thème paraît tout à fait d'actualité.

Ce rapport se base sur les réponses à un questionnaire reçues de 32 Etats membres ainsi que sur un certain nombre d'autres sources. Les chapitres relatifs à la situation de la criminalité organisée ont été rédigés par le Service des problèmes criminels (Direction Générale des affaires juridiques) du Conseil de l'Europe, et la partie sur la criminalité économique par le Professeur Michael Levi (Université de Cardiff), M. Nicholas Dorn (Université de Cardiff) et le Professeur Leonid Fituni (Centre d'études stratégiques et mondiales, Moscou).

La menace de la criminalité organisée

L'ENVIRONNEMENT DE LA CRIMINALITE ORGANISEE

La Convention des Nations unies contre la criminalité transnationale organisée a recours à un concept de criminalité organisée universellement accepté. Il subsiste néanmoins des ambiguïtés qui rendent assez difficiles les analyses de la criminalité organisée et l'établissement d'un rapport sur la situation dans ce domaine dans les 46 Etats membres du Conseil de l'Europe.

La sécurité continue d'être perçue comme une préoccupation majeure dans de nombreux pays du monde, en particulier, depuis les attentats terroristes perpétrés en Espagne, en Fédération de Russie et en Turquie en 2004, au Royaume-Uni et en Egypte en 2005. Des enquêtes laissent penser que les Européens sont particulièrement inquiets à propos de leur sécurité. Le terrorisme et le sentiment général d'insécurité continueront d'influer sur les politiques criminelles et à susciter des controverses sur l'équilibre entre sécurité et libertés fondamentales.

Le lien, voire l'amalgame, effectué à l'occasion entre les concepts de criminalité organisée et de terrorisme contribue à une certaine ambiguïté et conduit, parfois, à établir à tort un lien entre le terrorisme et les méthodes particulières par lesquelles il est financé ou pratiqué. Criminalité organisée et terrorisme sont - a priori - des notions distinctes. La criminalité organisée vise avant tout à obtenir des avantages financiers ou autres avantages matériels, tandis que le terrorisme s'appuie sur la violence engendrant la peur pour changer l'ordre juridique et constitutionnel ainsi que les politiques en place. Cela n'exclut pas certaines similitudes et relations entre criminalité organisée et terrorisme, les crimes servant à financer le terrorisme et certains mouvements terroristes servant pratiquement d'écran à la criminalité organisée.

L'élargissement de l'Union européenne à dix nouveaux membres, le 1^{er} mai 2004, a constitué un événement majeur. Certains ont craint que l'ouverture des frontières n'entraîne une montée de la criminalité dans les « vieux » pays de l'Union. Il semblerait que cela n'ait pas été le cas et que le nombre de suspects originaires d'Europe orientale soit resté stable, voire même ait diminué dans certains cas. Les informations disponibles jusqu'ici confortent la thèse selon laquelle les frontières profitent davantage aux criminels qu'à la justice pénale et à la répression.

Les pays européens ont de nombreuses caractéristiques et valeurs communes, mais ils présentent en même temps des asymétries en termes de développement humain et de gouvernance. Il est probable que ces différences persisteront et qu'elles favoriseront la criminalité organisée.

La corruption reste un thème clé en Europe et un important facteur favorisant la criminalité organisée et la criminalité économique. En 2005, on note une augmentation du nombre de rapports sur la corruption dans le secteur privé. Les tentatives des criminels d'exercer une influence indue sur les acteurs politiques ne sont pas un phénomène nouveau mais elles prennent de l'importance à mesure que les risques réglementaires augmentent, d'où un nombre croissant d'infractions économiques susceptibles de ne pas être détectées. C'est pourquoi on s'intéresse de plus en plus à la question des "finances politiques" - y compris le financement des partis politiques et des campagnes électorales - et à celle de la corruption politique en général. Les préoccupations suscitées par l'impact de la corruption sur la démocratie en Europe sont susceptibles, dans un proche avenir, de figurer en meilleure place sur l'agenda européen.

Si des protections adéquates ne sont pas mises en place, la mondialisation continuera de faciliter la criminalité organisée et, en particulier, la criminalité économique au niveau transnational. Les gouvernements nationaux ont une capacité de réponse limitée face à ces défis transnationaux qui évoluent rapidement. Des efforts concertés s'imposent donc aux plans européen et international.

En 2004/2005, des mesures ont été prises pour renforcer encore le cadre international de la lutte contre la criminalité organisée et les autres formes d'infractions graves. Trois nouveaux traités ont ainsi été ouverts à la signature par le Conseil de l'Europe en mai 2005:

- La Convention pour la prévention du terrorisme (STE 196)
- La Convention sur la lutte contre la traite des êtres humains (STE 197)
- La Convention relative au blanchiment, au dépistage, à la saisie et à la confiscation des produits du crime et au financement du terrorisme (STE 198).

Un nombre croissant d'instruments sont donc disponibles mais ils n'auront l'impact souhaité que s'ils sont pleinement ratifiés et mis en œuvre efficacement par les Etats membres.

ACTIVITES CRIMINELLES

En Europe la criminalité organisée revêt de nombreuses formes et recouvre des activités très diverses. Certains marchés du crime sont toutefois communs à la plupart des pays européens où ils sont perçus comme des menaces majeures:

CRIMINALITE ECONOMIQUE

La criminalité économique est un des principaux champs d'action des criminels organisés en Europe. En termes de produit généré et de préjudice matériel causé, elle est considérée comme l'activité la plus importante de la criminalité organisée (voir infra).

PRODUCTION ET TRAFIC DE DROGUE

L'Europe est probablement le marché de la drogue le plus rentable du monde. Avec un taux de 0,5 %, elle semble être la région du globe où la prévalence des usagers d'héroïne est la plus élevée; cette prévalence est particulièrement forte en Europe orientale (par exemple en Lettonie et en Fédération de Russie). Pour la cocaïne, les taux de prévalence de certains pays européens (en particulier l'Espagne et le Royaume-Uni) figurent aussi parmi les plus élevés du monde. La consommation d'amphétamines (par exemple au Royaume-Uni, en Estonie et au Danemark) et d'ecstasy (République tchèque, Royaume-Uni) est élevée ou supérieure à la moyenne mondiale. Dans l'Union européenne (des 25), entre 1,2 et 2,1 millions de personnes du groupe d'âge 15-64 ans sont définies comme des « usagers de drogue à problème ». Entre 0,85 et 1,3 million d'entre elles consomment des drogues injectables.²²⁵

Le trafic de drogues est considéré comme l'une des activités les plus importantes des groupes et réseaux criminels organisés en Europe et comme le principal enjeu – du moins sur la base du nombre d'affaires recensées – en Allemagne, en Arménie, en Croatie, en Espagne, à Monaco, en Norvège, aux Pays-Bas, en Pologne, en République tchèque et au Royaume-Uni.

TRAITE DES ETRES HUMAINS

Des individus sont exploités comme une marchandise par des criminels organisés qui pratiquent principalement la traite et le trafic illicite des êtres humains, les deux formes ayant de graves implications pour les droits de l'homme.

Longtemps passée sous silence, la traite des êtres humains serait aujourd'hui une activité importante de la criminalité organisée dans environ la moitié des Etats membres. Bien qu'il y ait de nombreuses formes d'exploitation, en Europe – selon les rapports reçus – la plupart des victimes de la traite sont des femmes et des jeunes filles qui sont exploitées à des fins sexuelles. Ce n'est donc pas une coïncidence si la grande majorité des victimes se trouvent dans le secteur de la prostitution, et si la proportion des travailleurs du sexe migrants ne cesse d'augmenter. La plupart des victimes en Europe viennent d'Etats membres du Conseil de l'Europe. Des pays comme la Bulgarie, la Fédération de Russie, la Moldova, la Roumanie, et l'Ukraine sont cités

225 Sources : l'ONUDC 2005 et l'EMCDDA 2004.

particulièrement souvent comme pays d'origine. Les enfants représenteraient une fraction considérable des victimes, y compris de la pornographie sur Internet.

En 2004 et 2005, dans de nombreuses parties de l'Europe, le nombre d'enquêtes sur la traite des êtres humains a continué d'augmenter en Belgique, Bulgarie, France, Hongrie, Moldova, Pologne, Roumanie et Ukraine. On a également noté un accroissement considérable du nombre de condamnations pour ce motif. En Europe du sud-est – région emblématique de ce phénomène ces dernières années – la traite des êtres humains semble diminuer, ou du moins est-elle devenue moins visible.

TRAFIG DE PERSONNES

D'après l'Organisation internationale des migrations, sur les 130 millions de migrants internationaux dans le monde, quelque 20 à 40 millions sont des migrants irréguliers et environ 4 millions de migrants irréguliers sont en train de se déplacer à tout moment. L'Europe est une destination attrayante. On pense généralement que quelque 300 à 450 000 migrants irréguliers entrent chaque année dans les pays riches d'Europe occidentale. Dans le même temps, les demandes d'asile en Europe sont tombées en 2004 à leur niveau le plus bas depuis 20 ans et les données relatives au premier semestre de 2005 montrent un nouveau recul.

En Europe, le trafic de personnes – autre désignation des migrations illégales – est une question politiquement très sensible et qui figure au premier rang des préoccupations de l'Union européenne (UE) depuis un certain temps. Cet intérêt s'explique, notamment, par la question de l'élargissement de l'UE, la libre circulation des personnes et l'accès aux marchés du travail, mais aussi par les phénomènes de xénophobie et de racisme.

Pour 2004/2005, les rapports d'un nombre croissant de pays européens font un lien entre le trafic de personnes et la criminalité organisée. Ils laissent entendre que des groupes et des réseaux criminels organisés, utilisant des moyens de plus en plus sophistiqués pour l'introduction clandestine de migrants, jouent un rôle important et que différents groupes criminels locaux coopèrent le long des itinéraires de trafic.

L'utilisation permanente de navires en Méditerranée pour introduire clandestinement en Europe des migrants d'Afrique du nord coûte de plus en plus de vies humaines. Plusieurs centaines de personnes périssent chaque année entre l'Afrique du nord et l'Europe du sud pendant leur voyage et plus de 5000 y auraient perdu la vie au cours des dix dernières années.

CYBERCRIMINALITE

Tous les pays de la planète font appel aux technologies de l'information et des communications (TIC). Le nombre d'internautes dans le monde a presque triplé entre 1999 et 2005 passant de 300 à quelque 890 millions, dont près de 260 millions en Europe. Le commerce électronique est également arrivé à maturité en Europe. Les sociétés sont donc fortement dépendantes des TIC et vulnérables aux attaques. Bien que l'on ne puisse garantir leur exactitude, les estimations du préjudice économique à l'échelle mondiale imputable aux risques numériques étaient deux fois plus élevées en 2004 qu'en 2003 (500 milliards de dollars US contre 250). Les menaces pesant sur les données personnelles et financières confidentielles – sous la forme d'attaques de « phishing » et de chevaux de Troie – ont considérablement augmenté dans le monde en 2004. On signale une progression continue des envois massifs non sollicités (« spams ») ainsi qu'une augmentation considérable des bots et bot-nets.

L'hypothèse selon laquelle – du moins si l'on considère le volume et non le préjudice économique et social – la plupart des cybercriminels seraient des individus isolés, souvent des adolescents et de jeunes adultes, est probablement toujours valable. Cependant le nombre de rapports signalant des formes organisées de cybercriminalité est devenu plus fréquent en 2004 et 2005:

- Les attaques par saturation ont pour objectif l'extorsion des entreprises cibles. De cette façon, un marché traditionnel de la criminalité organisée, le racket de protection, s'exerce en ligne.
- Les pirates, qui utilisent des bot-nets, sont souvent très habiles et organisés, et peuvent donc faire partie de structures criminelles organisées.
- Les cybercriminels organisés, volent, achètent et vendent des millions de numéros de cartes de crédit et de documents d'identité et menacent le commerce électronique.
- Les criminels organisés infectent des millions d'ordinateurs et les vendent comme serveurs pour la propagation des spams et comme hôtes de sites web pour vendre de la pornographie, pirater des logiciels ou servir de façades à des banques factices et commettre des vols d'identité.
- La pornographie mettant en scène des enfants semble être devenue une importante activité des criminels organisés, des réseaux criminels partageant cette pornographie en ligne et exploitant des sites payants.

Il semblerait que les hypothèses formulées dans le rapport de situation 2004 se confirment. Alors qu'avant l'année 2004, la cybercriminalité organisée était assez rare et représentait un risque potentiel, l'exploitation par les criminels organisés des opportunités économiques offertes par Internet et de la dépendance des sociétés à l'égard des TIC semble être devenue une réalité.

BLANCHIMENT D'ARGENT

Beaucoup d'autres types d'infractions sont commises par des groupes et des réseaux criminels organisés – par exemple extorsion, vol, contrebande de biens culturels, trafic de contrebande, contrebande d'armes et autres. Cependant, le dénominateur commun de toutes les activités criminelles organisées et de la plupart des autres formes d'infractions graves constitue la recherche du profit. Au-delà d'un niveau de revenu modéré, les criminels ont besoin de blanchir le produit du crime de manière à ce qu'il ne puisse être distingué de l'argent honnête.

L'Europe joue un rôle majeur dans le blanchiment mondial de l'argent et ce à la fois comme source et comme destination du produit du crime, et – par l'intermédiaire de ses marchés financiers – comme acteur dans les différentes étapes du processus de blanchiment. En 2004, le nombre de rapports adressés aux services de renseignement financier signalant des transactions suspectes a continué d'augmenter dans la plupart des pays, ce fut notamment le cas en Allemagne, en Belgique, en France, au Liechtenstein, aux Pays-Bas, au Royaume-Uni et en Ukraine. La criminalité économique gagnant en importance, la fraude et le détournement de fonds représentent une partie importante des enquêtes sur le blanchiment d'argent, du moins dans les pays ayant une approche basée sur l'universalité de l'infraction principale, comme l'ont signalé par exemple la Belgique, la Fédération de Russie et la Roumanie.

GROUPES ET RESEAUX CRIMINELS ORGANISES

Les criminels collaborent de bien des manières différentes selon les activités auxquelles ils se livrent. Certains groupes et réseaux se spécialisent dans un domaine. Toutefois, les informations relatives à 2004/2005 semblent indiquer que de plus en plus de groupes et de réseaux sont engagés dans deux domaines ou plus de criminalité.

Les types d'organisations criminelles que l'on trouve dans les pays européens comprennent les organisations pyramidales traditionnelles, des entreprises familiales, des groupes ethniquement fermés et homogènes, des réseaux structurés, des réseaux assez lâches et fluides, des modèles hybrides et d'autres encore. Il semble que les formes organisationnelles de type réseau sont aujourd'hui plus répandues en Europe que les groupes pyramidaux traditionnels.

Le recours à la violence et à l'intimidation est fréquent pour assurer la discipline à l'intérieur des groupes criminels, mais il est aussi inhérent à certaines infractions telles que l'extorsion, la traite des êtres humains et le trafic de drogue. La violence semble toutefois moins importante aujourd'hui que les relations symbiotiques entretenues par la corruption et d'autres formes d'influence sur l'administration publique, les hommes politiques, le système de justice pénale ou les médias.

La majorité des groupes et réseaux criminels importants utilisent des structures commerciales légales et des professionnels légitimes pour couvrir et appuyer leurs activités criminelles. Etant donné que les criminels pénètrent dans les institutions légales en investissant leurs gains dans des entités commerciales légales, les frontières entre les structures légales et illégales, dans une société donnée, s'estompent de plus en plus. Cela pose évidemment des défis considérables à l'Etat de droit. L'implication de plus en plus grande de formes graves de criminalité économique (a) de groupes et de réseaux criminels organisés et (b) d'entreprises créées à des fins légitimes, ne font qu'aggraver la situation.

La criminalité économique – une menace pour l'Europe?

L'accélération de la mondialisation de l'économie depuis les années 1980 a multiplié les possibilités de criminalité économique en Europe. Dans les anciens Etats communistes d'Europe, ces possibilités sont liées à la privatisation, à l'exportation de matières premières et à l'émergence de secteurs financiers et bancaires qui s'accompagne de fuite des capitaux, d'évasion fiscale, de faillites frauduleuses, de corruption, de blanchiment d'argent et de criminalité organisée. Après la fraude financière et les manipulations comptables portant sur des milliards d'euros de sociétés telles qu'Enron, WorldCom, et Tyco International qui - bien que basées aux Etats-Unis- ont eu un impact sur les investisseurs et les consommateurs européens, le scandale Parmalat, à la fin de 2003, a montré que les défaillances du contrôle et les infractions économiques de grande ampleur étaient possibles en Europe également. Ces scandales ont aussi démontré l'importance d'éviter de chercher les menaces sérieuses de criminalité organisée uniquement du côté de la pègre.

LE CONCEPT DE CRIMINALITE ECONOMIQUE

Alors que la criminalité économique semble avoir un coût très nettement supérieur à celui de toutes les autres formes de criminalité, elle ne répond à aucune définition claire largement reconnue. En 1981, le Conseil de l'Europe a adopté une Recommandation sur la criminalité des affaires²²⁶ énumérant 16 infractions spécifiques et non spécifiques considérées comme des infractions d'affaires. Elles comprennent différents types de fraude, la formation de cartels, les infractions fiscales, les infractions en matière de monnaie et de change, la création de sociétés fictives, les infractions boursières et bancaires, la concurrence déloyale, et d'autres encore. Cette Recommandation repose sur l'hypothèse que la criminalité des affaires a une incidence négative au-delà des victimes individuelles et du préjudice matériel dans la mesure où :

- elle lèse un grand nombre de personnes, la communauté dans son ensemble, voire l'Etat,
- elle nuit à l'économie nationale et/ou internationale, et
- elle cause une certaine perte de confiance dans le système économique lui-même.

Les pays européens n'en continuent pas moins d'utiliser différentes définitions ou de désigner différents types d'infractions comme infractions économiques, ce qui rend les comparaisons difficiles. Et même parmi la minorité de transgressions qui sont signalées ou identifiées indépendamment, beaucoup n'apparaissent peut-être pas dans les statistiques de la police et de la justice pénale: les responsables de la réglementation préfèrent donner des orientations et des conseils discrets, éventuellement étayés par des actions administratives ou civiles, et de n'engager des poursuites qu'en dernier recours. De plus, les services de répression mettent plus fortement l'accent sur les auteurs d'infractions et sur les domaines qui sont le plus susceptibles de causer un important préjudice extérieur visible, tandis que les mécanismes d'audit s'attachent à réduire les risques internes à l'entreprise ou à l'institution. Peut-être est-il impossible de savoir si une augmentation du nombre d'infractions économiques enregistrées correspond à une augmentation effective de la criminalité ou si elle tient au fait que les services de répression, les organes de réglementation et autres se sont montrés plus attentifs à ce problème particulier. Ainsi, l'élargissement de l'obligation de dénoncer le blanchiment d'argent a entraîné de plus nombreux signalement de cas de fraude et d'évasion fiscale par les institutions financières et les professionnels, mais cela ne signifie pas nécessairement que la fraude a augmenté. Une difficulté particulière, dans la préparation d'un rapport annuel de situation est que non seulement la durée des fraudes diffère sensiblement mais la rapidité avec laquelle elles sont mises au jour est variable. Ainsi, les fraudes consécutives à une perte ou à un vol de cartes sont-elles découvertes plus rapidement que celles qui résultent d'un « clonage » de cartes, elles-mêmes découvertes beaucoup plus rapidement que les fraudes comptables complexes telles que l'affaire Parmalat. Il est donc difficile de déduire ce qui s'est passé "en" 2004 à partir des affaires qui ont été traitées au cours de la même année.

226 Recommandation R(81)12 sur la criminalité des affaires adoptée par le Comité des Ministres le 25 juin 1981.

CRIMINALITÉ ECONOMIQUE ET CRIMINALITÉ GÉNÉRALE

Compte tenu des problèmes conceptuels mentionnés ci-dessus, il faut considérer les statistiques de la criminalité économique avec prudence. Si l'on en croit le nombre d'affaires enregistrées, ayant donné lieu à des poursuites ou jugées, les infractions économiques représentent dans la plupart des pays européens une catégorie importante - mais pas la plus importante - des infractions. Par exemple:

- En Allemagne, en 2004, la fraude, les abus de confiance, les infractions aux règles de l'insolvabilité et de la concurrence ont représenté ensemble plus d'un million d'affaires, soit plus de 15% de toutes les infractions enregistrées. Toutefois, si l'on retient la définition appliquée par la police, à savoir que de telles infractions doivent causer un préjudice au-delà des victimes individuelles (par exemple au système économique en général) ou exiger des compétences commerciales particulières, seules 94 743 affaires (soit 1,43% du total) sont considérées comme des infractions économiques.
- En Fédération de Russie, 402 300 infractions économiques ont été enregistrées en 2004, soit environ 13% du total.
- En Suède, quelque 70 000 affaires (soit 5,6% de toutes les infractions enregistrées) ont été liées à la fraude à des infractions fiscales, à des détournements de fonds et à des abus de confiance, à des infractions au préjudice des créanciers, à la contrefaçon de monnaie, etc. Toutefois, dans un sens plus étroit, - infractions au préjudice des créanciers, infractions comptables et fiscales - moins de 13 000 infractions (environ 1% du total) sont considérées comme des infractions financières.

PRINCIPAUX DOMAINES DE LA CRIMINALITÉ ECONOMIQUE EN EUROPE

En Europe, les escroqueries telles que le détournement de fonds et l'abus de confiance sont - avec la fraude fiscale - les formes les plus répandues de criminalité économique:

- En Allemagne, numériquement, la fraude liée au crédit financier pour des activités commerciales en rapport avec des marchandises, des services et des services financiers a représenté 40% des 94743 affaires de criminalité économique en 2004, les infractions aux règles sur l'insolvabilité 16%, les infractions liées à l'emploi 15%, les infractions liées à l'investissement et au financement 13%, la fraude et l'abus de confiance en rapport avec des investissements 11%, les infractions liées à la concurrence 5%.
- En Fédération de Russie, les principaux types de criminalité économique sont la fraude (13%), le détournement de fonds (13%), la fraude visant les consommateurs (20%) et la contrefaçon de monnaie ou de titres (7%).
- Dans les pays de l'Europe du sud-est (Albanie, Bosnie-Herzégovine, Croatie, "ex-République yougoslave de Macédoine" et Serbie-Monténégro) les catégories importantes sont la fraude fiscale et douanière - liée également à la création de sociétés fictives et à des faillites frauduleuses -, ainsi que la fraude liée au crédit financier.
- En Suède, la fraude et les conduites frauduleuses impliquant des individus sont répandues mais les infractions contre les créanciers et les infractions comptables et fiscales sont considérées comme les principales infractions économiques.

En dehors des infractions enregistrées, plus d'un tiers des entreprises européennes - en particulier des grandes entreprises - sont victimes d'escroquerie et d'autres types

d'infractions économiques telles que détournement de fonds, abus de confiance, cyber-infractions ou corruption²²⁷.

La corruption est un outil majeur sur lequel s'appuie la criminalité économique dans toute l'Europe. Elle peut parfois viser à éviter des poursuites, mais aussi faciliter la fraude à la TVA, la fraude carrousel, et les infractions à la propriété intellectuelle. Elle comprend de plus en plus la corruption dans le secteur privé pour l'obtention de contrats, comme le montrent par exemple les allégations récentes signalées en Allemagne (Volkswagen, Infineon, Mercedes, BMW), ainsi que l'obtention plus "normale" de contrats de travaux et autres contrats par des acteurs économiques liés à des groupes et réseaux criminels organisés plus traditionnels ou leur servant d'écrans.

En ce qui concerne la fraude contre les intérêts des communautés européennes en 2004, la fraude liée aux fonds structurels et aux fonds de cohésion s'est élevée à 695 millions d'euros (71% du total notifié par les Etats membres de l'UE à l'Office européen de lutte antifraude, OLAF), la fraude liée aux « ressources propres traditionnelles » à 206 millions d'euros (21%), et la fraude liée aux dépenses agricoles à 82 millions d'euros (8%).

La fraude aux cartes de paiement a continué d'être un grave problème en 2004. La plupart des cas sont internes aux pays (bien que les touristes puissent être pris pour cibles dans certains pays en transition et destinations de vacances). Il y a cependant eu une tendance à la fraude à l'identité, bien qu'il soit important d'avoir une définition cohérente de cette infraction. Jusqu'à présent, malgré la multiplication des cartes à puce avec code confidentiel dans toute l'Europe, la piste magnétique reste vulnérable à un réencodage frauduleux – impliquant souvent des commerçants malhonnêtes –, et des employés aident à révéler des informations sur des comptes qui peuvent être utilisées pour exploiter des cartes de paiement.

Comme il est indiqué ci-dessus, la cybercriminalité – et de plus en plus la fraude par le biais informatique – cause à l'échelle mondiale des pertes économiques de plusieurs milliards d'euros. Les rapports montrent par exemple que si les années précédentes, 4% seulement des cyberattaques visaient le commerce électronique, en juin 2004 ce fut le cas de 16% d'entre elles, dont on peut supposer qu'elles avaient une motivation économique.²²⁸ A l'échelle mondiale, les menaces pesant sur les données personnelles et financières confidentielles – sous forme d'attaques de type phishing et de chevaux de Troie – ont considérablement augmenté en 2004. En ce qui concerne les infractions au droit d'auteur, la part des logiciels pirates parmi les logiciels utilisés dans les Etats membres du Conseil de l'Europe atteignait, en 2004, 25% en Autriche, 87% en Russie et 91% en Ukraine.

La contrefaçon d'autres marchandises est également importante : en 2003-2004, 54% des cigarettes commerciales saisies en vrac par l'Administration des douanes du Royaume-Uni étaient des contrefaçons, contre 41% en 2002-2003 et 15% en 2001-2002.

En Europe, la majorité des auteurs découverts d'infractions sont des nationaux du pays où les infractions sont commises, encore que beaucoup d'entre eux aient des liens transnationaux.

227 PriceWaterhouse Coopers Global Economic Crime Survey 2003.

228 Symantec Internet Security Threat Report VI (January - July 2004).

LE PREJUDICE

En nombre d'affaires, la criminalité économique enregistrée ne représente peut-être pas la catégorie de criminalité la plus importante dans les pays européens, mais le préjudice économique et social qu'elle cause est extrêmement élevé. Les pertes - comme celles qui sont imputables à d'autres types d'infractions - doivent être considérées en fonction de critères d'accessibilité économique tels que le PIB (à la fois PIB par habitant et PIB des groupes affectés). Les répercussions affectives ne sont pas traduites en données financières pures et certaines fraudes à l'identité et à l'investissement / fraudes par télémarketing ont des effets dévastateurs en termes d'opportunités de vie et de rêves brisés, et portent en outre un coup à la confiance (en particulier lorsqu'il n'y a pas de régime de dédommagement de l'Etat ou à l'échelle du secteur):

- D'après une enquête récente, le coût direct (« tangible ») moyen de la fraude, pour les sociétés qui en ont été victimes, a été de 1.7 millions US \$ par société au cours d'une période de deux ans. Ce chiffre ne tient pas compte des « effets collatéraux » de la criminalité économique sur les relations commerciales, le moral du personnel et l'image de marque.²²⁹
- Au Royaume-Uni, la contrebande de cigarettes en 2003-2004 a entraîné une perte de 3 milliards d'euros de droits et taxes, et la contrebande de tabac à rouler la perte de 1,1 milliard d'euros supplémentaires. Les cigarettes de contrebande ont représenté 15% du marché britannique. A cela il faut ajouter la perte de 400 millions d'euros imputable à l'alcool de contrebande et de 550 millions d'euros au titre du fioul taxable introduit en contrebande. En revanche, les pertes due à la fraude carrousel ont diminué, en raison de procédures plus rigoureuses.
- En Allemagne, les infractions économiques ne représentent que 1,4% de toutes les infractions enregistrées mais plus de 55% du préjudice matériel. On considère cependant que le préjudice immatériel est plus important encore du fait de la distorsion de la concurrence, de l'impact sur d'autres entreprises liées à celles qui commettent les infractions ou qui sont dépendantes d'elles, du préjudice causé à la société par les infractions contre la législation sur l'environnement, les aliments, la sécurité du travail et d'autres lois, et de la perte éventuelle de confiance dans le fonctionnement de l'ordre économique et social.
- En Serbie, le préjudice matériel dû à la criminalité économique en 2003 a été estimé entre 300 à 500 millions d'euros.

Des affaires dont on a beaucoup parlé ces dernières années - comme Enron, Parmalat, Vivendi Universal, Tyco ou WorldCom - ont attiré l'attention du public et de la justice pénale sur la criminalité économique. Les fraudes ont été facilitées par le manque de transparence, la faiblesse des vérifications et des organismes de réglementation, la corruption et la complicité présumée des banques. Le préjudice matériel s'est chiffré en milliards d'euros mais le risque de préjudice économique systémique dû à la perte de confiance, bien que difficile à calculer, est une des raisons qui a conduit le Groupe de Bâle à élaborer des critères fondés sur le risque pour les institutions financières. Un autre enseignement à tirer est que même les affaires qui ne se terminent pas par une condamnation pénale peuvent causer un préjudice considérable en entamant la confiance du public dans les entreprises, comme on l'a vu en Allemagne dans l'affaire Mannesmann/Vodafone.

Si la criminalité économique est un problème important dans les pays riches d'Europe, on ne pense pas qu'elle ait encore atteint des proportions menaçant la stabilité des

229 PriceWaterhouseCoopers Global Economic Crime Survey 2005.

systèmes économiques et sociaux. La situation est cependant différente dans les économies plus jeunes d'Europe centrale et orientale où la criminalité économique entraîne une perte significative de recettes publiques, compromet le développement, la stabilité et le fonctionnement des économies de marché et décourage les investissements directs étrangers.

CRIMINALITE ECONOMIQUE ET CRIMINALITE ORGANISEE

Une distinction entre criminalité économique – « criminalité en col blanc » d'hommes d'affaires par ailleurs légitimes tentés de prendre des raccourcis – et criminalité organisée (« criminalité en col noir ») de criminels opérant sur des marchés illicites comme ceux de la drogue) serait artificielle et ne rendrait compte que d'une petite fraction de la réalité européenne d'aujourd'hui.

Un très grand nombre de criminels organisés ne commettent pas tant d'infractions contre les personnes – comme le vol, le kidnapping, le meurtre sur contrat et l'extorsion – qu'ils opèrent comme des hommes d'affaires ordinaires investissant dans l'économie légale, tirant parti de créneaux commerciaux et analysant les coûts, les avantages et les risques. Il y a également des similitudes dans la manière dont les entreprises criminelles et légales sont structurées. Dans l'économie moderne fondée sur la connaissance, la hiérarchie et l'inflexibilité ne favorisent ni les entreprises légales ni les entreprises illégales et, malgré le pouvoir et l'échelle des multinationales, la plupart des entreprises criminelles et légitimes opèrent dans des réseaux plus lâches.

Le point de départ peut être différent : des groupes et des réseaux criminels sont constitués dans le but de commettre des infractions, tandis que les entreprises légales sont créées a priori pour faire des affaires légales, mais elles peuvent ensuite se livrer à la fraude, à la corruption et à d'autres pratiques illégales.

Dans la pratique, du fait que la fraude et d'autres formes de criminalité économique et de conduites criminelles (y compris la corruption dans le secteur privé) se répandent, et que les criminels organisés investissent le produit du crime dans l'économie légale, les activités et les marchés légaux et illégaux se recoupent, fusionnent et se fondent de plus en plus les uns dans les autres. Il serait donc peut-être plus réaliste de considérer la criminalité organisée comme un sous-ensemble de la catégorie plus vaste de la criminalité économique.

Allant dans ce sens, les pays européens font de plus en plus des rapports sur différentes formes d'infractions économiques dans leurs évaluations de la situation de la criminalité organisée. Ils incluent en particulier :

- La fraude à la taxe sur la valeur ajoutée, signalée par un certain nombre de pays de l'UE, y compris la fraude par absence de déclaration d'activités lucratives assujetties à la TVA, la fraude pour non enregistrement aux fins de la TVA, la fraude par constitution de sociétés fictives à des fins frauduleuses, et en particulier la fraude intra-communautaire avec opérateur inexistant, c'est-à-dire la fraude de type carrousel.
- La fraude liée aux marchés publics et s'accompagnant de corruption, de formation de cartels, d'intimidation et de violence pour monopoliser l'accès à des marchés publics.
- La fraude liée à la privatisation. Dans plusieurs pays de l'ex-Union soviétique et de l'Europe du sud-est, le pouvoir des groupes et réseaux criminels organisés repose sur des avoirs acquis pendant le processus de privatisation,

principalement dans les années 1990, dans des conditions peu claires, et, dit-on, avec l'intervention de leaders politiques et de hauts fonctionnaires.

- La fraude à l'investissement mettant en jeu des sociétés non existantes et des marchandises et des services fictifs, qui passent d'un pays européen à l'autre en fonction de la vigilance de la police/des organismes réglementaires et ciblent des investisseurs en tous lieux.
- La contrefaçon de produits légaux comme entreprise hautement organisée gérée par des entrepreneurs internationaux.

La tendance à la « criminalité économique organisée » n'est pas confinée à des régions particulières mais s'observe dans toute l'Europe:

- En Allemagne, 12% des affaires de criminalité organisée enregistrées en 2004 étaient liées à la criminalité économique. Elles ont généré 45% (ou 603 millions d'euros) des profits estimés de toutes les activités criminelles organisées (1,33 milliard d'euros). Les principales activités ont été la fraude au crédit, à l'investissement et aux marchés publics. La plupart des délinquants étaient allemands.
- Aux Pays-Bas, plus de 30% des enquêtes criminelles effectuées en 2004 sur la criminalité organisée impliquaient la fraude, principalement la fraude liée à la taxe sur le chiffre d'affaires, les droits d'accise et la TVA. 61% des délinquants étaient néerlandais, mais beaucoup d'entre eux coopéraient avec des suspects basés dans d'autres pays comme l'Espagne et le Royaume-Uni. Le Luxembourg aurait joué un rôle de premier plan dans la création d'entreprises douteuses et la transmission de biens et de factures.
- En Fédération de Russie et dans quelques autres pays tels que la Géorgie, les infractions contre les personnes et les infractions violentes continuent d'être le fait de la couche la plus basse de la population criminelle, mais il s'y ajoute des formes subtiles et plus sophistiquées de criminalité, en particulier la criminalité économique. Les cibles sont en particulier le secteur des carburants et de l'énergie, la production et le commerce d'alcool, de cigarettes et de biens de consommation contrefaits, les services commerciaux et financiers transnationaux, les pierres et les métaux précieux, les marchés publics à tous les niveaux, les banqueroutes frauduleuses et les soustractions frauduleuses ainsi que les prises de contrôle agressives de titres représentatifs de propriété. La "légalisation" des entreprises et des avoirs illicites est actuellement une préoccupation majeure des criminels organisés et des hommes d'affaires.
- Dans l'Europe du sud-est, la criminalité économique est à l'origine d'un nombre important d'affaires liées à la criminalité organisée, en particulier en liaison avec la fraude fiscale et douanière, les marchés publics, la privatisation, la fraude bancaire, et la contrefaçon de produits légaux. On accorde également une attention croissante au problème du blanchiment d'argent. L'Albanie a signalé 17 affaires et la Croatie 14 de « criminalité économique organisée » en 2003. La Bosnie-Herzégovine perdrait chaque année des centaines de millions d'euros à cause de la « criminalité économique organisée » : en 2004, 907 affaires ont donné lieu à des poursuites, et conduit à la condamnation de 212 auteurs d'infractions. Au Kosovo, près de 5000 affaires de criminalité économique ont été enregistrées, mais 3 seulement étaient manifestement liées à des criminels organisés au sens classique.

Comme on l'a observé plus haut, la criminalité économique est l'un des principaux marchés des criminels organisés en Europe, et en termes de produit généré et de préjudice matériel causé, c'est probablement l'activité la plus importante de la criminalité organisée.

CONCLUSIONS

La criminalité économique est à l'origine d'une part importante du préjudice matériel et immatériel causé par la criminalité en Europe. Elle renforce l'impact économique et social négatif de la mondialisation sur les sociétés européennes. Elle compromet le fonctionnement des systèmes économiques, notamment en Europe centrale et orientale. Et elle suscite dans toute l'Europe des inquiétudes considérables au sujet de la démocratie et de l'Etat de droit.

La criminalité économique et la criminalité organisée ont de nombreuses caractéristiques communes et obéissent à une logique similaire, fondée sur la recherche du profit et l'exploitation en particulier des opportunités offertes par la mondialisation et l'asymétrie de la gouvernance. Les marchés légaux et illégaux se fondant de plus en plus les uns dans les autres, la criminalité organisée peut être considérée comme un sous-ensemble de la criminalité économique, plutôt que comme une catégorie entièrement distincte de criminalité. Une question qui se pose à cet égard est de savoir si les techniques spéciales dont disposent les services de répression pour enquêter sur la criminalité organisée devraient également être disponibles pour enquêter sur la criminalité économique.

Les niveaux de criminalité économique reflètent (a) des motivations et des compétences, et (b) des opportunités, qui sont affectées par la vigilance de l'Etat, des médias et du public. Autrement dit, les cadres réglementaires ont bien un impact sur la criminalité économique.

En ce qui concerne les chefs d'entreprise, il est important que le gouvernement d'entreprise trouve des moyens de contrôle efficaces qui mettent en question le comportement des hauts responsables ainsi que celui des personnes qui ont un statut moins élevé. Les autres problèmes qu'il est nécessaire d'aborder ont trait à la vulnérabilité des fonctionnaires et des parlementaires (aux plans national et intergouvernemental) à l'achat de décisions concernant les règlements qui influent sur les intérêts des entreprises. Les questions fondamentales, à cet égard, sont les suivantes :

- Où sont les frontières entre le lobbying légitime et l'influence indue et la corruption?
- Comment empêcher les délinquants économiques de s'emparer des institutions et processus démocratiques ?

De nombreux hommes d'affaires douteux - dont la fortune a pour origine des opérations douteuses (liées entre autres au processus de privatisation en Europe orientale) - sont entrés dans la sphère commerciale légale. Les sociétés européennes sont confrontées à un dilemme : ou bien les autoriser à se légitimer, ou bien les exclure. L'une et l'autre solution comportent des risques.

Les défis de la mondialisation et de la criminalité économique ne peuvent être relevés par les gouvernements ou les pays individuels seuls mais doivent, au contraire, faire l'objet d'une réglementation aux plans européen et mondial. Le Conseil de l'Europe peut apporter une importante contribution comme il l'a montré à l'égard de la cybercriminalité, du blanchiment d'argent et de la corruption. Les résultats de la Conférence Octopus Interface sur la lutte contre la criminalité organisée donnent suffisamment matière à réflexion pour la poursuite des travaux du Conseil de l'Europe dans ce domaine.

A p p e n d i x