



A comprehensive approach to tackling organised crime

Introduction

Serious and organised drug-related crime continues to threaten the values and functioning of our European society, the safety, well-being and fundamental rights of our citizens and the preservation and functioning of the rule of law of our economies. We invite the new Commission to further develop a multidisciplinary whole of EU approach against organised crime which comprehensively disrupts criminal organisations, embracing the approach taken by the Coalition of six European countries. Important components of such a strategy are:

- (1) making logistical hubs more resilient,
- (2) disrupting criminal money flows in all its forms and
- (3) utilizing a criminal law and administrative approach.

Proposals

Increasing the resilience of logistical hubs

1. Revise the International Ship and Port Facility (ISPS) code of the International Maritime Organization (IMO) and the European implementation Regulation 725/2004 on enhancing ship and port facility security. The legislation should be specified to better include the risks of serious and organised crime as opposed to its current primary focus on countering terrorist threats.
2. We encourage the Commission to perform EU audits of ports to gain insight in the level of implementation of the ISPS code at a port facility level.
3. We invite the Commission to develop a uniform policy on the matter of the distribution of drugs through post and parcel services.

Disrupting and confiscating illicit financial flows

4. CASPs operating within the EU should have the obligation to designate a legal representative in a Member State for providing information on account holders and supporting quick freezing of virtual assets. Subsequently, the seizure would have to be formalized via official channels by means of a European freezing order.
5. A European exploration of criminal underground banking is of utmost importance to identify modes of regulation to effectively tackle this phenomenon. Such a study should consider the parallel nature of criminal underground banking and explore options to target this system beyond the existing AML-framework.
6. The EU should encourage the sharing of knowledge and best practices regarding this phenomenon to equip Member States with the same tools to tackle this phenomenon.

Beyond criminal law: preventing infiltration of the legal economy by criminals

7. It is necessary to share information across borders between administrative bodies. A starting point could be investigating the extent to which the new Directive 2023/977 on the exchange of information between law enforcement authorities solves current obstacles that hinder cross-border cooperation.

Rationale and elaboration per strategy

Increasing the resilience of logistical hubs

Criminals make huge profits from selling illegal narcotics, for which they abuse legal infrastructure such as seaports, airports and the postal and parcel services. Therefore, the Netherlands has drafted an action plan to combat drug trafficking via our logistical hubs. Criminals, however, always look for the path of least resistance. Hence, the Netherlands encourages the Commission to establish a uniform European legal and policy framework to prevent displacement effects towards other logistical hubs. For instance, by creating uniform standards for port security measures and the control of goods.

A means to promote this, is the revision of the International Ship and Port Facility (ISPS) code of the International Maritime Organization (IMO) and the European implementation Regulation 725/2004 on enhancing ship and port facility security. This ISPS-code and, thus, the Regulation are primarily focused on countering terrorist threats. We believe that this legislation should be specified to better include the risks of serious and organised crime. By doing so, Member States are required to have the same level of security against modus operandi of criminals in their port facilities and on their ships, thereby preventing displacement effects from occurring and allowing specific security measures to be taken at a local level. Preferably, the ISPS-code is even changed worldwide to make sure ports in other countries (such as in Latin America, Western Africa, and the Western Balkan) are adequately secured. We therefore ask for the Commission's support during discussions with the IMO to revise the ISPS code and, in anticipation of efforts by the IMO, to already explore revising the EU regulation to realise a higher level of resilience of European ports and processes. The EU could thereby be a forerunner of and setting the standard for global changes.



Subsequently, we encourage the Commission to, by example of the US Coast Guard, perform audits of ports to gain insight in the level of implementation of the ISPS code at a port facility level. This is imperative since security measures of some ports, for instance in Latin America, are below par and provide criminals with easy opportunities to hide drugs or other illegal goods in containers and/or on ships. If the US deems a port as insufficiently secured, additional requirements are imposed on ships mooring in the US that have previously moored at such ports. The EU audits should thus strongly encourage ports to be better protected against threats as described in the ISPS-code.

Finally, the excellent logistical network in the EU and its large postal and parcel services give drug trafficking organisations opportunities to traffic drugs amongst legal trade flows around the world. Distribution of drugs through post and parcel services is likely to increase further, in line with the expected growth of online retail activity. The Netherlands invites the Commission to develop a uniform policy on the matter, for example in negotiations on the Universal Postal Conventions.

Disrupting and confiscating illicit financial flows

To tackle serious organised crime effectively, it is important to frustrate criminal businesses and financial facilitators and disrupt criminal financial networks. Technological developments and shifts in modus operandi have led to the proliferation of new avenues for moving, accessing, and using the proceeds of crime, which ask for a common European approach.

One of these developments entails the use of virtual assets for illicit purposes. The decentralized nature of these assets warrants changes in the existing legal regulatory framework. Despite new European anti-money laundering legislation, cooperation with and compliance of virtual assets service providers (CASPs) remains challenging, especially if these providers are located outside of the EU or when it is unclear where they are located. New legislation – such as the Transfer of Funds Regulation (TFR) and the Markets in Crypto Assets Regulation (MiCA)–tackles these issues, however it does not address the aforementioned challenges fully. Building upon the widened scope of the AML framework for CASPs and the power for financial supervisors to require a contact point, CASPs operating within the EU should have the obligation to designate a legal representative in a Member State of the EU for providing information on account holders and supporting quick freezing of virtual assets. Subsequently, the seizure would have to be formalized via official channels, for instance by means of a European freezing order. This would also simplify the process for CASPs, as they can state to whom the account holder can turn if he or she wishes to contest the (interim, informal) freezing order. Finally, this would create clear obligations for CASPs and avenues for judicial and supervisory bodies in Member States to pursue criminal and or/administrative sanctions in the case of non-compliance.

In recent years, the European Union has developed an increasingly comprehensive body of anti-money laundering legislation, making oversight of the financial system more effective. These efforts are successful in targeting illicit financial flows that make use of the regulated financial sector. However, criminal organizations increasingly make use of a worldwide parallel criminal underground banking system for swiftly moving (mostly) cash proceeds around the world, without the need for cash money to cross national or European borders. In some cases, they use Trade Based Money Laundering (TBML) schemes or abuse gold trade instead. A European exploration of criminal underground banking is of utmost importance to identify modes of regulation to effectively tackle this phenomenon. Such a study should consider the parallel nature of criminal underground banking and explore options to target this system beyond the existing AML-framework. In any case, the EU should encourage the sharing of knowledge and best practices regarding this phenomenon to equip Member States with the same tools to tackle this phenomenon.

Beyond criminal law: preventing infiltration of the legal economy by criminals

Tackling organised crime is often seen as the responsibility of law enforcement and public prosecution. However, to tackle organised crime effectively, an integral approach should be taken, including criminal law, tax law and the administrative approach. The Netherlands therefore welcomes the Commission's encouragement of the administrative approach in the Member States and the role of the European Network on the Administrative Approach network herein.

Interventions by administrative bodies can avert infiltration of the legal economy through preventing criminals from setting up companies, acquiring permits or subsidies and contesting in tenders. Some Member States are currently working on an administrative approach, though often within their own national borders and always based on their national legal system. We highly support these national efforts. Yet, criminals operate across borders and try to use the lack of information-sharing of administrative bodies to infiltrate the economies of other Member States. To tackle this, it is necessary to share information across borders between administrative bodies. A starting point could be investigating the extent to which the new Directive 2023/977 on the exchange of information between law enforcement authorities solves current obstacles that hinder cross-border cooperation. If the Directive is not the solution, it is essential that an European legal



basis is developed which allows Member States to share criminal information for administrative purposes. One possible first step is to test the approach among a smaller group of interested Member States. We need to be as creative as criminal organizations and must prevent the misuse and/or infiltration of our economies by these organizations. Allowing cross-border cooperation for the administrative approach is essential to achieve these goals.