

NOTE

from:	Secretariat
to:	Working Group X "Freedom, Security and Justice"
Subject:	Summary of the meeting on 25 September 2002

The second meeting of Working Group X "Freedom, Security and Justice" took place on 25 September 2002, from 11 h - 13 h and 15 h - 18 h, under the chairmanship of Mr John Bruton. The list of members of the Working Group attending the meeting is in the Annex.

1. Fight against organised crime (view point from the National Police Services)
 - Statement by Mr Patrick ZANDERS, Director at the Federal Police (Belgium),
 - Statement by Mr John ABBOTT, Director of the National Crime Intelligence Service (United Kingdom),followed by an exchange of views.

At the outset, the Chairman indicated that the particular emphasis had to be given on issues which would need Treaty amendments.

The following points were *inter alia* made by Messrs. Zanders and Abbott in their statements¹:

- Both experts gave a convergent view of the current crime situation in their countries and in Europe, as well as of priorities of their respective services which include notably fight against terrorism, drug trafficking, trafficking in human beings and illegal immigration, paedophilia, organised fraud and money laundering.
- In this context, Mr. Abbott stressed several features of modern organised crime: *inter alia*, he

¹ All experts heard at this meeting indicated that they expressed their personal views.

explained that organised crime reacts rapidly to changing "market conditions" by moving into new areas of crime (e.g. a recent trend of less trafficking of drugs and increased trafficking in people and in cigarettes), by learning from defeats and by exploiting the advantages of free movement of persons, goods and capital inside the Union. Mr. Zanders made a special reference to the criminality perpetrated by unaccompanied minors coming from Eastern Europe and directed by organised crime groups in an effort to circumvent criminal law.

- While paying tribute to the progress achieved over the last years, both experts gave an account of what they regard as major obstacles which currently prevent a more efficient law enforcement cooperation in the Union.
- Both experts underlined problems currently resulting from procedural rules diverging from one Member State to another (examples mentioned by Mr. Abbott included rules on taking and admissibility of evidence, use of informants, cooperative witnesses, disclosure rules, data protection...). Mr. Zanders also criticised the lack of harmonised substantive rules of criminal law.
- Both experts expressed discontent with the current functioning of the Europol Management Board (of which they are members). In their view, that board is overburdened with detailed legal issues and not able to focus sufficiently on strategic planning and setting priorities for Europol and on monitoring Europol's performance, not least as a result of the half-year rotating presidency. Its 15 members are taking all too often national positions rather than adopting a common European perspective. Europol is forced to follow overly bureaucratic procedures even for very basic action.
- Both experts confirmed that Europol's efficiency suffers from an insufficient supply of information by Member State authorities. Mr. Abbott also mentioned the lack of clarity of the rules governing Europol.
- Both experts considered that the newly established Task Force of Police Chiefs does not currently perform the role envisaged by the Tampere European Council.
- Mr. Zanders deplored a lack of both global strategic planning and setting of priorities at Union level and of a framework for multilateral operational cooperation between the Member States' operational services. In his view, many overlapping and sometimes inconsistent initiatives are presently submitted to the Council by the successive Presidencies. On the other hand, according to Mr. Zanders, no appropriate follow-up and implementation control exists for actions agreed at Union level. Mr. Zanders felt that the current Council structure in the field of police cooperation works inefficiently because it has to fulfill too many different functions at the same time without distinction.

- Mr. Zanders considered that the Member States often continue to privilege bilateral over multilateral forms of operational cooperation due to the legal rigidity and bureaucracy of the latter.
- The experts also made concrete suggestions for future improvement:
- Mr. Zanders suggested that the Council should adopt a strategic "security plan" setting out overall priorities in the fight against crime and also fixing an appropriate relation between such priorities and capacities needed. Mr. Abbott called for a move from cooperation (in the form of ad-hoc response to identified problems) to *steady* collaboration and coordination.
- Both experts called for greater harmonisation or approximation of elements of criminal procedural law (or, as Mr. Abbott mentioned in this respect, in "working procedures" and "operational practices"). Furthermore, Mr. Zanders advocated greater harmonisation in priority areas of substantive criminal law, whereas Mr. Abbott preferred mutual recognition (accompanied by harmonisation in procedures) as the right way forward and was not convinced by the need to set up a "European Federal criminal law".
- Mr. Zanders proposed to distinguish more clearly amongst the functions currently performed in the Council, and to introduce a double structure which would distinguish between procedures for setting the normative framework, on the one hand, and a structure for operational cooperation between the Member States and their services, based on formal commitments, on the other hand.
- Asked about the perspective of a "European FBI", both experts recognised certain weaknesses pleading against a direct transposition of the American model. For Mr. Abbott, such a perspective would presuppose the definition of uniform EU crimes and procedures and entail a risk of losing contact with local police forces. He argued instead for exploiting more fully the potentials of the existing structures. For Mr. Zanders, a preferred model for further development would be to permit a more operational Europol to coordinate investigations and to play a leading role in joint investigative teams, instead of the merely supporting function it has now. Mr. Zanders considered however a long-term evolution towards a sort of "European FBI", as well as towards a European public prosecutor, as the right solution. In Mr. Abbott's view, the consequences of the creation of such a prosecutor should be carefully analysed.
- Both experts warned against trying to define in the Treaty an exhaustive list of crimes necessitating harmonisation or cooperation at Union level, since experience showed that organised crime moves quickly from one area into another and constantly develops new criminal activities. Union action, and Europol activity in particular, should aim at fighting organised or serious crime in general. According to Mr. Zanders, it would be preferable if

Ministers in the Council were to define the types of crime to be considered as priorities for action at Union level. These types of serious crimes could be eventually harmonised.

- Both experts stressed the need to establish closer links between Europol, Eurojust, the Police Chief Task Force, and to avoid overlap and duplication.
- Mr. Zanders also mentioned the need to improve the training of police officers; he suggested in this respect the creation of a genuine Police Academy.
- Mr. Zanders stated that nothing would, from his perspective, stand in the way of "communitarising" police cooperation in the Union.

2. Fight against organised crime (view point from European bodies)

- Statement by Mr Jürgen STORBECK, Director of EUROPOL, followed by an exchange of views

The following points were *inter alia* made by Mr. Storbeck in his statement and upon questions by members of the Group:

- In his overview of the current crime situation and of Europol's priorities in the fight against crime, Mr. Storbeck confirmed the information given by Messrs. Zanders and Abbott (see above). In addition, Mr. Storbeck mentioned, e.g., that even less severe types of criminality such as burglary is increasingly organised by international criminal groups and that global cooperation between several groups is becoming ever closer. As regards priority areas of fight against crime in Europe, Mr. Storbeck confirmed the indications made by the other experts and mentioned "cybercrime" and counterfeiting of the Euro as additional priorities of Europol's action.
- Mr. Storbeck confirmed the problem analysis given by Messrs. Zanders and Abbott on obstacles to more efficient action of Europol and more intense police cooperation, although he underlined the impressive progress achieved since Europol has taken up its action. Mr. Storbeck mentioned in this context Europol's telecommunications system, its analyses on criminal organisations and the introduction of a centralised information database permitting research on individual cases.
- According to Mr. Storbeck, the Member States still tend to put too much emphasis on national sovereignty in this area; in particular they insist on unanimity for all strategic and even for detailed operational and technical questions considered in the Europol Management Board. As a result, European police cooperation reacts too slowly to new crime phenomena, both in adapting its legal framework and with respect to practical issues such as training. Mr. Storbeck also

regretted the need for Europol to work in 11 languages and the absence of a single working language.

- He deplored a lack of implementation, control and evaluation of decisions taken by the Council. For example, there is currently no mechanism of control of whether Member States fulfill their obligations to supply Europol with information. He emphasised that such supply of information and intelligence is decisive for efficient action by Europol.
- Mr. Storbeck qualified national priorities in fighting crime as not always compatible with each other. On European level, much duplication of efforts existed presently amongst the various concurrent and not always compatible systems, initiatives, bodies and databases recently introduced (Europol, Schengen, Olaf, Eurojust, various networks...). He pleaded for a streamlining of these various organisms and networks.
- In Mr. Storbeck's view, the parliamentary control of Europol is currently unclear; he stated to be accountable to too many national parliaments. Stronger and more efficient democratic control would be in Europol's own interest. He mentioned the perspective of control by the European Parliament as a possible solution.
- Mr. Storbeck stated that the current procedures for amending the Europol Convention and its various implementing rules are too cumbersome; many important texts have not yet entered into force for lack of ratification by all Member States. For example, attempts have been made for two years to amend the Europol Convention in order to reduce the constraint of the unanimity rule. While recognising that the present system ensures good acceptance by the Member States of the conventions which they have ratified, Mr. Storbeck said it would be good if the Europol Convention and its implementing rules could be transformed into instrument of Community law, in order to bring about necessary changes in the law more quickly.
- Mr. Storbeck explained that at present Europol does not have a leading function but influences national investigations and participates in them; its input has recently facilitated some important arrests. On perspectives for a more operational role of Europol, Mr. Storbeck made a difference between investigations, in which he could imagine a greater role for Europol (for example allowing Europol to interrogate witnesses) and executive powers (such as confiscation or arrest warrants) which should remain with national authorities. But a substantial extension of Europol's investigative functions would then raise the question of who would then control and cooperate with Europol on the judicial side. In the discussion, while accepting the point that existing tools of cooperation should first be consolidated, Mr. Storbeck defended the aim of greater centralisation in police cooperation in Europe, provided however that it would exist under clear rules and accountability. He also stated that the more operational powers Europol

would be granted, the more necessary it would be to review the Protocol on Europol's immunities, adding that so far Europol has never invoked its immunity.

- For Mr. Storbeck, in some areas of crime where there was a typical need for a European answer such as fraud against the Union's financial interests or counterfeiting of the Euro, there would be a good case for having EU institutions such as a European prosecutor and / or a European police.

3. Statement by Mr Michael KENNEDY, President of EUROJUST;

Statement by Mr Franz-Hermann BRÜNER, Director-General of European Anti-fraud Office (OLAF), followed by an exchange of views.

Mr. Kennedy's introductory statement referred *inter alia* to the following points:

- Mr. Kennedy explained the background of Eurojust, from the Tampere European Council until its formal establishment in March of this year and the forthcoming transfert of its seat to The Hague. In this connection, he pointed to the limited resources of Eurojust (currently only one seconded national expert in the secretariat). He also explained Eurojust's practical functioning as a college of national magistrates, prosecutors and police officers with equivalent functions. He informed that Eurojust has been involved so far in about 300 cases, half of which were linked to terrorism, money laundering and drugs trafficking.
- Mr. Kennedy described Eurojust's function as "an oil" in the system of European judicial cooperation in criminal matters (which is still mainly based on the 1959 Council of Europe Convention on mutual legal assistance). This function of facilitating the cooperation between national authorities included such practical assistance as for instance in the drafting of letters-rogatory. Eurojust also aims at improving coordination in investigations and prosecutions carried out by national prosecutors. Mr. Kennedy emphasised in particular Eurojust's right to request a national authority to initiate investigations in particular cases; this could be a powerful tool, since a national authority declining such a request has to state its reasons to Eurojust; the latter can make its view on such cases known to the public in its regular reports.
- Mr. Kennedy stressed that Eurojust, thanks to its composition, can cross the borders between the systems of common and of civil law (notably the varying status of police services, prosecutors, prosecuting magistrates...).
- Mr. Kennedy criticised the current overlaps between various organisms (Europol, Eurojust, OLAF) and stressed the need for greater coordination between them.

- Mr. Kennedy referred to the practical difficulties resulting from the different procedural rules existing in Member States (different surveillance mechanisms, rules for evidence gathering). He called for the establishment by the Union of a legal text on evidence gathering, which should ensure that where officials from several Member States work in a team, evidence gathered by them should be admissible in court in all the Member States concerned.

Mr. Brünner's introductory statement covered *inter alia* the following issues:

- Mr. Brünner explained the background of OLAF's mission, and notably the fact that the Union has a voluminous budget of its own which is exposed to high risks of fraud, both on the income and expenditure side. He indicated that estimated losses to the Union's financial interests extend up to 2 Billion Euros annually.
- The Council decided in 1996 that the Community should have its own competence for administrative investigations carried out together with the Member States (competence exercised first by UCLAF and since 1999 by OLAF). The Treaty mentions the Community's financial interests as a common value. However, according to Mr. Brünner, protection of Europe's money is not always a priority for the national authorities, and unequal treatment is often given from one Member State to another to files investigated by OLAF. Too few of OLAF's investigations actually lead to real judicial proceedings in the Member States, and it is sometimes difficult to learn about their concrete results. Recovery of defrauded money often takes too long.
- Mr. Brünner called for developing a European solution to the protection of the Union's financial interests. At this time, OLAF and Eurojust, although working together, are operating in different pillars; a common solution would in his view be needed for the future. Mr. Brünner referred to the European public prosecutor, which had been proposed by the Commission and on which a hearing had been held last week, as one possible solution offering a highly specialised tool.

On questions from members of the Group, Mr. Kennedy, Mr. Olivier de Baynast, Vice-President of Eurojust (in particular on questions relating to his field of responsibilities at Eurojust), and Mr. Brünner made *inter alia* the following observations:

- All speakers advocated a closer cooperation between Europol, Eurojust and OLAF.
- Mr. Kennedy said that Eurojust will not flourish if cases are not referred to it voluntarily by Member States, as Eurojust cannot demand such a referral. He further mentioned Eurojust's forthcoming report which identified over 20 individual obstacles to efficient mutual legal assistance.

- Mr. de Baynast mentioned a problem of visibility, for the practitioners, of the European penal legislation. He called for a "superior text" comprising that legislation, and for a stronger definition of Europe as a common judicial area to which all magistrates in Europe would have to be committed. He also pleaded in favour of creating a strong legal basis ensuring that Eurojust receives necessary information, and of enshrining the principle of mutual recognition of judicial decisions in the Treaty. Speaking of a "problem of legal instruments", Mr. de Baynast criticised that the Member States are currently exhausting themselves in the negotiations of texts which are then not ratified or not implemented.
- Mr. Brünner stressed the need to ensure equal treatment in all Member States concerning the judicial follow-up of cases of fraud against the EU budget, especially in the light of enlargement. He considered that Member States' Treaty obligations in this respect must be more strictly enforced.
- Mr. Brünner confirmed that he has less difficulty with the flow of information from the Member States, as compared to the statements by the representatives of Europol and Eurojust, thanks to the legal obligations for exchange of information existing under the Community regulations.
- Mr. Brünner signalled difficulties with varying definitions of "fraud" in the Member States, which for example render Europe-wide reporting on fraud problematic.
- Mr. Brünner confirmed that his office acts in complete independence from the institutions in its investigations. Mr. Kennedy informed that the degree of independence of the Eurojust members is determined by the national legal systems under which they operate.
- As regards the proposal for a European prosecutor, Mr. Kennedy recommended to analyse in detail whether there is a need for such a change; in particular, he thought that the difference between a European prosecutor's power to direct investigations, and Eurojust's existing right to request the initiation of investigations, would in practice be minimal. The first important goal should be to get Eurojust running. If however a European prosecutor was to be developed, the members of Eurojust would feel that it should be developed on the basis of Eurojust.
- Both Mr. Kennedy and Mr. Brünner confirmed that a legally binding Charter of fundamental rights should not cause changes or problems in their practical work.

**List of members of the Working Group attending
the meeting on 25 September 2002**

- **Mr John BRUTON, Chairman, member of the Praesidium**
- **Mr Pat CAREY**
- **M. Josef CHABERT**
- **Mr Alberto COSTA**
- **Mr Ben FAYOT**
- **Mr. Jacques FLOCH**
- **M. David HEATHCOAT AMORY**
- **Mr Oskaras JUSYS**
- **Mr Jürgen MEYER**
- **Mrs. Marie NAGY**
- **Mrs Androula VASSILIOU**
- **Mr Antonio VITORINO (M. Michel PETITE)**