



Fighting Organized Crime in the EU

A New Era with the Lisbon Treaty and the Stockholm Programme

by Henrik Sjölander / summarized by Cemal Özkan

The EU's actions to counter transnational organized crime have paved the way for a process aimed at harmonizing and unifying national structures on legal matters in order to combat transnational crime. This brief will outline novelties relevant for the prevention and fight against organized crime as presented in the recently ratified Lisbon Treaty and the Stockholm Programme.

The fight and prevention of transnational crime have increasingly gained priority on the agendas of European Union countries. The main reason for this development is attached to three interrelated events. First, the security void that appeared after the fall of Communist regimes in Eastern Europe created incentives for criminal elements to capitalize on weak state control and, subsequently, grow in size. Second, the Maastricht Treaty's (1992) provision for the freedom of movement has eased the operations of organized networks in "old" Europe. Lastly, the enlargement of the EU in 2004 has, by and large, created a flexible milieu for the operations of criminal networks in the European continent in an unprecedented manner.

The EU's engagement in crime-related issues, or lack thereof, has gone from being merely passive in the 1980s, to highly active, due to the ratification of the Lisbon Treaty and the adoption of the Stockholm Programme. Previously, there was a desire among member states to prevent organized crime. However, different sets of regulations, organizational structures that were yet to be harmonized, and diverse member priorities prevented the realization of effective cooperation. With the ratification of the Lisbon Treaty, new opportunities for fighting organized crime have been created. One of the EU's missions includes offering its citizens an area of freedom, justice and security within its internal borders, as stipulated in the Lisbon Treaty. However, there are still a lot of uncertainties as to what combative policies it provides in the area of organized crime due to its recent ratification and various provisions. Hopefully,

these uncertainties will eventually be overcome when the EU's restructuring process matures. Therefore, it is a precarious task to determine the exact implications of the Lisbon Treaty.

According to EU legislation, criminal activity is defined as organized if it can meet six out of eleven possible criteria.¹ Of these six criteria, the following four are mandatory: (1) collaboration of more than two people; (2) committing offences repeatedly over an indefinite period; (3) suspected of the commission of serious criminal offences; (4) determined by the pursuit of, amongst other things, profit and/or power, but not including terrorist motives. The EU's approach to define criminal activity is problematic since it makes the process of identifying and labelling organized crime overly bureaucratic. An alternative would be to work with a broader, less statutory-bound, understanding of what constitutes organized crime.

Organized Crime: Novelties of the Lisbon Treaty

Overall, decision making has eased since most areas of the third pillar (Police and Judicial Co-operation in Criminal Matters) are now based on qualified majority voting. This is the main rule across the Freedom, Security and Justice-area of the EU. However, one of the remaining problems is that unanimity still applies to operative cooperation and there are preconditions for the activities of one member state in another member state. This might cause disruption in decision making in the



future since *operative cooperation* has different meanings in different member states. Therefore, it is crucial that EU members create a uniform definition of operative cooperation and decide whether it entails the exchange of information, physical interventions, or if it is targeted against one or more individuals.

The Lisbon Treaty provides for the establishment of a Standing Committee on Internal Security (COSI) with a mandate to facilitate and strengthen coordination of operative cooperation between member states. The committee aims to evaluate the general state of operative co-operations in the EU zone, identify flaws, and forward recommendations for further improvements. However, the committee has not yet materialized and it remains to be seen how it will fulfill these tasks. Furthermore, the Lisbon Treaty's major challenges lie in its structure and geographical location. Brussels is far away from law enforcement realities and COSI, as a bureaucratic organ, is not an ideal actor to facilitate operative police work.

Organized Crime in the Stockholm Programme

The Stockholm Programme is the third five-year plan with guidelines for justice and home affairs. This comes after the Tampere and Hague Programmes which resulted from the Amsterdam Treaty that committed the EU to establishing common areas of freedom, justice and security. Simply, the evolutionary process of the guideline programs has gone from being abstract and non-binding instruments to concrete and mandatory measures. Also, the repressive undertone in the Hague Programme, a testimony to the alarmist tendencies on terrorism in post 9/11 Europe, has been replaced with more balanced wording in the Stockholm Programme. Illicit drugs have also been downgraded together with terrorism in the new program. This is surprising since much of the profits of organized criminal networks are highly dependent on drug trade. Also, reports show that the overall consumption of illicit drugs is not decreasing in the EU zone as a whole.

Organized crime is mentioned under most subheadings and has a section of its own in the program. As an increasing threat to state security, the existence of organized crime provides for "complementary" cooperation in

areas such as criminal statistics and criminological studies that get funded by the EU. The strategy on organized crime provides for strong transnational cooperation, including increased interaction with law enforcement agencies in third countries, as well as uniform techniques in terms of investigative and preventive measures.

Final Comments

The Lisbon Treaty and the Stockholm Programme are two documents that, despite their flaws, will prove indispensable to European law enforcement officers in their work against organized crime. With these new documents, crime fighting will be made easier due to the creation of a legal basis for Eurojust (judicial cooperation) and Europol (the EU's criminal intelligence agency), data protection, and above all, institutional simplifications coupled with strengthened institutional frameworks. However, it is important to underscore in addition to structure, legislation and organizations that pan-European personal contacts need to be strengthened. This is critical when pertaining to the future work of Europol and Eurojust in third countries. Another big challenge is the lack of awareness on the issue of transnational crime amongst member states of the EU of the EU. This is deduced from the fact that criminal networks relatively recently internationalized which makes awareness as well as competency amongst politicians, law enforcement agencies and the general public on the issue critically low. Previously, when organized crime operated on a national level counter measurements came through traditional national channels. Now, the question is whether governments and law enforcement agencies are fully aware of the fact that organized crime has internationalized and that transnational problems require transnational solutions. Therefore, there might be a risk that the political will among EU members to prevent transnational organized crime is insufficient to tackle the threats posed by it.

Ultimately, institutional tools in Brussels need to be utilized by aware and competent national actors that are able to cooperate in a transnational fashion within the framework of the EU. Therefore, there is an urgent need to understand the implications that might be caused by the lack of political will in terms of preventing transnational crime. This problem can be tackled, eased and ma-



terialized through EU funds allocated for network-building projects and exchange programs that will be a crucial complementary element to the newly strengthened institutional tools in Brussels. Otherwise, the Lisbon Treaty and the Stockholm Programme will be at risk of going down in history as paper tigers, who only oiled the bureaucratic process.

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The opinions expressed in this Policy Brief are those of the author and do not necessarily reflect the views of the Institute for Security and Development Policy or its sponsors.

Footnote

1. The criteria are: 1. Collaboration of more than two people; 2. Each with own appointed tasks; 3. Committing offences repeatedly over an indefinite period; 4. Using some form of internal discipline and control, including violence and threats; 5. Suspected of the commission of serious criminal offences; 6. Operating on an international level; 7. Using violence or other means of intimidation, including threats, outside the group; 8. Using commercial or businesslike structures; 9. Engaged in money laundering; 10. Exerting influence on politics, the media, public administration, judicial authorities or the economy; 11. Determined by the pursuit of, amongst other things, profit and/or power, but not including terrorist motives.

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