(Acts adopted under Title VI of the Treaty on European Union)

PRE-ACCESSION PACT ON ORGANISED CRIME BETWEEN THE MEMBER STATES OF THE EUROPEAN UNION AND THE APPLICANT COUNTRIES OF CENTRAL AND EASTERN EUROPE AND CYPRUS

(Text approved by the JHA Council on 28 May 1998)

(98/C 220/01)

We, the Ministers of Justice and Home Affairs of the Member States of the European Union, acting in our capacity of Members of the Council of the European Union, in full association with the Commission,

and

We, the Ministers of Justice and Home Affairs of the applicant countries of Central and Eastern Europe, including the Baltic States, and of Cyprus,

the former hereinafter referred to as the 'EU Member States' and the latter hereinafter referred to as 'CCEEs and Cyprus',

HAVING MET at Brussels on 28 May 1998,

HAVING CONSIDERED the European Union's action plan on organised crime, approved by the European Council at Amsterdam in June 1997 [1], and in particular Recommendation No 3 thereof,

EMPHASISING our common commitment to democracy, human rights and the rule of law and aware that organised crime constitutes a serious threat to these values because it penetrates, contaminates and corrupts the structure of governments, legitimate commercial and financial business and society at all levels,

ACKNOWLEDGING that at least the following elements are necessary for effective law enforcement cooperation and judicial cooperation, both at national and international level:

— an efficiently structured police administration, with the powers of action, trained staff and technical equipment needed for combating crime effectively,

— a suitably empowered justice system operating on the basis of modern substantive and procedural standards,

— satisfactory legal bases for combating corruption and a consistent application thereof,

— practical ability of the law enforcement authorities to combat organised crime, including drugs crime and international arms trafficking, confiscating the proceeds of crime and preventing money laundering,

— sufficient means of prevention in the fight against drug abuse,

— tight controls on the legal acquisition of weapons,

DETERMINED to work together closely to combat organised crime and other forms of serious crime, including trafficking in human beings and organised illegal immigration,

DETERMINED also to improve international cooperation in order to tackle the phenomenon,

HAVING REGARD to the Berlin Declaration of September 1994, the United Nations World Ministerial Conference on Organised Transnational Crime in November 1994, to the 40 recommendations of G7/P8 to

[1] OJ C 251, 15.8.1997, p. 1.

combat transnational organised crime of 12 April 1996, the 25 recommendations of the G7/P8 of the Ministerial Conference on terrorism of 30 July 1996 and the 10 principles to combat high-tech crime endorsed by the G8 on 10 December 1997,

ACKNOWLEDGING that we are already developing a common view on how to fight organised crime as all of us have joined certain international instruments relevant to the fight against organised crime,

HAVING REGARD to discussions on organised crime taking place in other international forums, such as the UN, which is currently examining the possibility of drafting a UN Convention on organised crime, following an initiative of the Republic of Poland,

ACKNOWLEDGING cooperation that already takes place between our authorities and wishing to strengthen it, both immediately and in a longer perspective,

DESIRING to this end to draw up a pact which will enable existing cooperation to be intensified during the pre-accession period,

TAKING INTO ACCOUNT the need for the CCEEs and Cyprus to implement the EU *acquis* before entering the European Union,

HEREBY DECLARE AS FOLLOWS:

Principle 1

We affirm our determination to cooperate fully in fighting all kinds of organised crime and other forms of serious crime.

Principle 2

We note with satisfaction that the CCEEs and Cyprus have expressed their intention to adopt and implement effectively the European Convention on Mutual Assistance in Criminal Matters of 1959 as well as the international conventions mentioned in Recommendation No 13 of the European Union's action plan on organised crime. This will be done as soon as possible, as set out in Recommendation No 13.

Noting that we have all ratified some of these instruments, the international conventions specified in Recommendation No 13 are the following:

— European Convention on Extradition, Paris 1957,

— Second Protocol to the European Convention on Extradition, Strasbourg 1978,

— Protocol to the European Convention on Mutual Assistance in Criminal Matters, Strasbourg 1978,

— Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Strasbourg 1990,

— Convention on Mutual Assistance between Customs Administrations and the Protocol thereto, Naples 1967 [1],

— Agreement on Illicit Traffic by Sea, implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Strasbourg 1995,

— Convention on the Fight against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna 1988,

— European Convention on the Suppression of Terrorism, Strasbourg 1977.

Moreover, we note with satisfaction the intention of the CCEEs and Cyprus to enact and enforce legislation which will enable them to ratify by their accession the Conventions mentioned in Recommendation No 14 of the action plan on organised crime.

Principle 3

We intend to cooperate in the development and effective operation of central law enforcement and judicial bodies responsible for the fight against organised crime. These bodies are in particular those contemplated in Recommendations Nos 1 (central national bodies

[1] It should be noted that this convention is not open to signature by candidate countries.

responsible for coordinating the fight against organised crime), 19 (central national contact points for the exchange of information), 20 (national multidisciplinary teams) and 21 (European Judicial Network) of the action plan on organised crime.

In accordance with the relevant national legislative framework these bodies will also facilitate:

— rapid and efficient international law enforcement cooperation and judicial cooperation relating to the fight against organised crime, and

— national coordination of the fight against organised crime.

We will notify national contact points established in accordance with Recommendation No 19 of the action plan to the General Secretariat of the Council of the European Union, which will circulate information about them to all concerned.

Being aware of the fact that coordination of criminal investigations is essential to achieve success in the fight against organised crime we consider, while fully respecting the constitutional structures of each of our States, that it is advisable to consider the establishment of multidisciplinary integrated teams at national level, as set out in Recommendation No 20 of the action plan to combat organised crime. We intend to organise meetings between such teams from time to time to discuss common strategies and actions, assisted by Europol as appropriate.

We agree to and to develop, with the assistance of Europol, a common annual strategy in order to identify the most significant threats in relation to organised crime, common to us all. To that end, each Presidency of the Council will organise meetings to develop and review this annual strategy which could usefully build upon the experiences of the annual organised crime report of the European Union. The CCEEs and Cyprus are ready to answer the questionnaire developed to that end by the European Union and will be appropriately informed about the work of the contact and support network of the Council and the work of Europol.

Principle 4

We stress the importance of cooperating closely in questions relating to the rapid and efficient exchange of information for purposes of investigations and mutual legal assistance as well as in the field of operative and investigative support.

The CCEEs and Cyprus will consider establishing judicial cooperation contact points to facilitate judicial cooperation both between themselves and with the Member States of the European Union with a view to their gradual incorporation into the network of the European Union.

Principle 5

We attach great importance to the mutual exchange of law-enforcement intelligence, while safeguarding the protection of data relating to individuals. The exchange of intelligence should not only be carried out as part of an information exchange within the scope of investigations but also for the purpose of gathering and sharing information for developing long-term strategies.

We are aware of the importance of gathering information on criminal groups and their whereabouts in order to support effective analysis.

We emphasise the importance of ensuring that any exchange of information is in conformity with the relevant rules relating to data protection, especially with the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981. We note with satisfaction the intention of the CCEEs and Cyprus to ratify that Convention as soon as possible, if they have not already done so.

We emphasise the need to give the fullest possible protection to sensitive information received from other countries. The competent authorities of each of our States are invited to advise each other as to requirements regarding the disclosure of information in the course of judicial and administrative proceedings and to discuss in advance potential difficulties arising from those requirements. In this context, we consider that a transmitting State should be able to impose conditions to be observed by the receiving State for the protection of sensitive information before deciding whether to transmit it.

Principle 6

We consider that mutual practical support for investigations and operations is of major importance.

This mutual practical support may include:

— training and equipment assistance,

— joint investigative activities and special operations, supported by Europol as appropriate,

— facilitating trans-boundary law enforcement cooperation and judicial cooperation as far as long-term investigations and short-term operations are concerned, especially by rapid processing of the relevant applications and logistical support in connection with trans-boundary cooperation,

— mutual exchange of law enforcement officers and judicial authorities for traineeships within the framework of investigations relating to our countries.

We emphasise the relevance and effectiveness of techniques such as electronic surveillance, undercover operations and controlled deliveries. We intend to facilitate international cooperation in these fields, taking full account of human rights implications.

Principle 7

We attach great importance to bi- or multilateral joint law enforcement projects. This form of cooperation should be striven for especially in those fields of organised crime which pose common trans-boundary problems, and it should draw upon the project-based approach endorsed by the Council of the European Union at its meeting on 4 December 1997.

We are aware of the need, in so far as necessary and in accordance with the relevant resolutions of the Council of the European Union, to establish and implement protection programmes for witnesses and for those individuals who cooperate with the judicial process, and to assist each other to this end, in particular by allowing for the possibility of accepting, by common agreement, the abovementioned persons in our countries.

Principle 8

We stress the importance of Europol as a channel for information and in terms of supplying analytical expertise and giving operative support also, over time, to the CCEEs and Cyprus.

Hence, the CCEEs and Cyprus intend to make the necessary preparations as soon as possible that would enable them to accede to the Europol Convention at the time of accession and to set up the necessary national units.

We note with satisfaction that the CCEEs and Cyprus are already making preliminary contacts with the Europol Drugs Unit and we encourage such contacts; and, once the Europol Convention has come into force, that they intend to start the preparations for formal agreements after the adoption of this pact, especially with regard to posting Liaison Officers in The Hague. The Council of the European Union and the Commission intend to assist the CCEEs and Cyprus to start setting up the necessary national units and to promote funding via appropriate Community programmes in accordance with the rules applicable to them.

Principle 9

In order to provide speed and effectiveness in the execution of rogatory letters and other judicial requests, we have noted with satisfaction the willingness of the CCEEs and Cyprus to make a statement of good practices in accordance with the Joint Action on good practices in mutual legal assistance in criminal matters [1] adopted by the Council on 29 June 1998.

Principle 10

In order to prevent offenders from benefiting from differences in our various legal systems which may create safe havens, we stress the importance of early ratification of the Extradition Conventions of the European Union of 1995 and 1996, drawn up within the framework of the European Union, and, of the CCEEs and Cyprus enacting legislation which will enable them to accede to these conventions by the time of their accession to the European Union. In doing so, we express our intention to make use as little as possible of the opportunities for reservations offered by those conventions. We will ensure efficient application of the principle of '*aut dedere, aut iudicare*'.

Principle 11

Opportunities offered by the different programmes such as the PHARE and MEDA programmes and the relevant specific programmes in the field of justice and home affairs such as OISIN, Grotius, STOP, Odysseus and Falcone, should be further explored for officials of law enforcement agencies or judicial authorities. In particular, training should be stimulated, with a view to obtaining a full understanding of organised crime as well as an assessment and improvement of the ways used to tackle them. For training, use could be made of relevant training modules such as those developed by the Association of Police Colleges (AEPC).

Principle 12

We consider that corruption is one of the major threats to our societies, defrauding citizens and private and public institutions alike. We therefore underline the need to develop in common a comprehensive policy against corruption in all its forms. To that end, we will organise regular consultations in common with the relevant bodies of the Council and the Commission when such policies

[1] OJ L 191, 7.7.1998, p. 1.

are developed, and the European Union Member States will strive to associate the CCEEs and Cyprus with this endeavour.

Principle 13

We agree that for the purposes of combating money laundering there should be full implementation of the 40 FATF recommendations, Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering [1] and the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

We express our intention to set up, if we have not already done so, at national level, financial intelligence units according to the definition of the Egmont Group, as being 'A central, national agency responsible for receiving (and, as permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information:

(i) concerning suspected proceeds of crime;

(ii) required by national legislation or regulation, in order to combat money laundering.'

Principle 14

In order to improve the existing cooperation between European Union Member States and the CCEEs and Cyprus, we should make the best use of our liaison officers and liaison magistrates and we emphasise the desirability of extending those arrangements.

Principle 15

We will entrust the implementation of this pact, as set out in the principles established above, to a group comprising experts from all the States participating in this pact. Implementation will be based on the following main elements:

— taking as its starting point the European Union action plan on organised crime, working to identify and counter the threat posed by international organised crime,

— regular monitoring and evaluation of developments in the field of combating organised crime in each of our countries and the definition, as appropriate, of priorities applicable to each country. This monitoring and evaluation will draw on collective evaluations undertaken by the experts from Member States and the Commission in the wider framework of the justice and home affairs aspects of the enlargement process,

— the planning, execution and joint evaluation of projects, with the involvement of Europol as appropriate, against organised crime with a view, *inter alia*, to identifying areas where technical and financial assistance would help prepare the CCEEs and Cyprus for membership of the European Union.

Done at Brussels, 28 May 1998.

For the Council
The President
J. STRAW

[1] OJ L 166, 28.6.1991, p. 77.