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AGAINST DRUG TRAFFICKING" REPORT ON GERMANY**

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THE EUROPEAN UNION**

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REV 1**

RESTREINT

CRIMORG 63

EVALUATION REPORT ON
SECOND ROUND OF MUTUAL EVALUATIONS
"LAW ENFORCEMENT AND ITS ROLE
IN THE FIGHT AGAINST DRUG TRAFFICKING"
REPORT ON GERMANY

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TABLE OF CONTENTS

PART 1

1. INTRODUCTION	4
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PART 2

2. GENERAL INFORMATION AND STRUCTURES	6
2.1. Competent Authorities - General Comments	6
2.2. Prosecution Services and Judges	9
2.3. Police Authorities	9
2.4. Customs Authorities	10
2.5. Joint Police and Customs Structures	11
2.6. Training	11
2.7. Monitoring	13

PART 3

3. INTELLIGENCE.....	16
3.1. Data Banks	16
3.2. Use of Data by Police and Customs	18
3.3. International Sharing of Data	20

PART 4

4. SPECIAL INVESTIGATION TECHNIQUES	22
4.1. Financial Investigations – Legislation and Guidelines	22
4.2. Financial Investigations – Competent Authorities	23
4.3. Controlled Deliveries.....	24

PART 5

5.	CO-ORDINATION AND CO-OPERATION	26
5.1.	Co-operation at National Level.....	26
5.2.	Co-operation at International Level.....	27
5.3.	Liaison Officers	29

PART 6

6.	EVALUATION OF THE EFFECTIVENESS OF SYSTEMS IN GERMANY RELATING TO THE FIGHT AGAINST DRUG TRAFFICKING: STRUCTURE, INTELLIGENCE, SPECIAL INVESTIGATION TECHNIQUES AND COORDINATION AND CO-OPERATION	30
6.1.	General Comments	30
6.2.	Possible Improvements	36
6.2.1.	Structure.....	36
6.2.2.	Intelligence.....	38
6.2.3.	Special Investigation Techniques – Financial Investigations	39
6.2.4.	Special Investigation Techniques – Controlled Deliveries.....	39
6.2.5.	Co-ordination and Co-operation at National Level	40
6.2.6.	Co-ordination and Co-operation at International Level.....	41

PART 7

7.	GENERAL CONCLUSIONS AND RECOMMENDATIONS TO GERMANY, AND, WHERE APPROPRIATE TO OTHER MEMBERS OF THE EUROPEAN UNION	43
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ANNEX

	LIST OF PARTICIPANTS OF THE DIFFERENT MEETINGS	46
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PART 1

1. INTRODUCTION

1.1. Following the adoption of the Joint Action of 5 December 1997, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime has been established.

1.2. Germany was the fourth Member State to be evaluated as part of the second round of mutual evaluations concerning law enforcement and its role in the fight against drug trafficking.

1.3. The examiners for the evaluation were Mr. Axel Herløv (Denmark), Mr. Magnus Törner (Sweden) and Mr. Robert Wallner (Austria). This team accompanied by two members from the General Secretariat and one member from the Commission visited Germany for five days from 22 October 2000 to 26 October 2000.

1.4. The programme for the visit and the list of the persons seen during the evaluation visit, and from whom information was received, is at Annex A.

1.5. Following these meetings, the evaluation team prepared this report, with the assistance of the General Secretariat, based on the observations and conclusions of the experts in the team together with the answers to the Questionnaire (doc. 12972/99 CRIMORG 171 Rev 1) which the German authorities had provided. The principle purpose of this report is to evaluate the application and implementation at national level of instruments dealing with law enforcement and drug trafficking, of the resulting legislation and practices at national level and of international co-operation in the fight against drug trafficking. The evaluation seeks in particular to assess co-operation and co-ordination between different law enforcement structures and operational practices in them. The main focus of the evaluation is the practical day to day co-operation between different units both at national and international level.

1.6. The report first describes the organisational structures, intelligence systems, special investigation techniques and methods of co-ordination and co-operation utilised in Germany in the fight against drug trafficking. The report then evaluates the effectiveness of these systems and finally, the experts draw conclusions and make recommendations.

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PART 2

2. GENERAL INFORMATION AND STRUCTURES¹

2.1. Competent Authorities - General Comments

2.1.1. Germany does not have a specifically appointed central co-ordinating body for the co-ordination of law enforcement efforts in the fight against drug trafficking. However, activities are co-ordinated on a strategic basis through the co-operation of customs and police bodies and at operational level in the joint drugs investigation teams. Nationally, a Drug Commissioner of the Federal Government has been appointed to oversee policy. The current Drug Commissioner is attached to the Federal Ministry of Health (Bundesministerium für Gesundheit, or BMG) and is responsible for the main priorities of prevention and treatment. The BMG has the main responsibility within the Federal Government for the formulation of the Narcotics Law. The Narcotics Law regulates, in particular, bans on illegal drug trafficking under criminal law.

2.1.2. Apart from the BMG, which has the main responsibility for the formulation of the Narcotics Law, the key federal and Länder authorities concerned with combating drugs trafficking are the Federal Ministry of Justice (Bundesministerium für Justiz or BMJ), the Federal Ministry of the Interior (Bundesministerium des Inneren or BMI), the Federal Ministry of Finance (Bundesministerium der Finanzen or BMF), the Ministries of Justice of the Länder and the Ministries of the Interior of the Länder.

2.1.3. The BMJ and the Ministries of Justice of the Länder are responsible for Prosecutors and the Judiciary. In Germany, each of the 16 separate Länder have their own Prosecutor Generals Office and all local Prosecution Offices at district level have separate departments which specialise in drugs-related crime.

2.1.4. The initiation of prosecutions in the area of drug crime is a matter for the Prosecution Services of the Länder. Only one Bundesland has a Central Public Prosecutor's office with

¹ This part of the report is essentially based on the answers Germany provided to the Questionnaire.

responsibility throughout the Land for co-ordinating prosecutions in the fight against drug trafficking. In a few cases the prosecution of drug offences is assigned to specific Public Prosecutor's Offices which are each responsible for the district covered by a Prosecutor General's Office.

2.1.5. The BMI and the Ministries of the Interior of the Länder are responsible for the police. The Federal Police, or BKA (Bundeskriminalamt) operates at national level whilst at local level, each Bundesland has its own separate police force (Landeskriminalamt or LKA and local police offices). In terms of organised drug trafficking, the BKA also operates at an international level and provides an investigation, evaluation and analysis service as well as a co-ordination role. Within the BKA, the "Organised and General Crime Department" (Organisierte und Allgemeine Kriminalität or 'OA') is specifically responsible for all action to combat international drug trafficking. It will only take on investigations where inquiries need to be made abroad or at the request of the local Länder police or other competent authorities such as the Federal Prosecutor General or the Federal Minister for the Interior.

2.1.6. The BMF is responsible for the customs authorities. The Zollkriminalamt (ZKA) operates at national level and provides an analytical and intelligence role. The customs structure does not follow the Länder system and instead there are 21 local offices spread throughout Germany. Each local office has a 'Customs Investigation Service' to support the work of the general customs personnel. The ZKA co-ordinates investigations by the Customs Investigation offices and acts at the same time as a central unit for the international exchange of information between customs administrations. Its principal aims are to provide support for investigations, to study trends and to develop strategies to combat drug smuggling.

2.1.7. A number of structures exist to ensure that there is co-ordination between law enforcement authorities and non-governmental organisations with regard to combating drugs. However, there are wide variances in approach, which reflects the federal nature of Germany where all 16 Länder can determine and implement their own policies. Some examples of initiatives undertaken in the Länder are as follows:

- * 2.1.7.(1) Multi-disciplinary "State Prevention Councils" focus on general social prevention measures and promote the setting up of local prevention councils.
- * 2.1.7.(2) Some Länder have Inter-ministerial working parties involving the Ministries of Health, Education, Interior and Justice to focus on the risks posed by addiction and drug abuse.
- * 2.1.7.(3) Multi-disciplinary "Local Prevention Councils" focus on promoting anti drugs programmes from both a deterrence and enforcement perspective.
- * 2.1.7.(4) Multi-disciplinary "Drugs Round Tables" focus on producing and co-ordinating specific and concrete measures for preventing and combating drug abuse.
- * 2.1.7.(5) Expert Conferences sponsored by authorities and institutions with responsibilities for the fight against drug-related crime with the aim of co-ordinating tasks and activities.
- * 2.1.7.(6) "Early Assistance Project" which aims to refer young drugs abusers to aid and therapy agencies.
- * 2.1.7.(7) The "Inspectorate for Prevention and Public Relations" based in Saxony, is responsible for preventive work with regard to young people.
- * 2.1.7.(8) Since 1998, the Länder of Hamburg, Lower Saxony (Hanover), Hesse (Frankfurt), North Rhine-Westphalia (Aachen, Bochum, Cologne, Dortmund, Essen, Münster and Wuppertal) and Saarland (Saarbrücken) have opened Drug Consumption Rooms or so-called "Shooting Galleries" to assist with monitoring and regulating the health and well being of addicts. Other demand reduction schemes initiatives include heroin substitution schemes and heroin supported treatment schemes.
- * 2.1.7.(9) Various arrangements are in place between law enforcement agencies and the private sector ranging from co-operation over the potential misuse of precursors, to Memorandums of Understanding with freight and transport companies.

2.1.8. In Germany the legal framework for drugs investigations is provided by the Narcotics Law, the Penal Code and Code of Criminal Procedure. There are also many guidelines applicable to the prosecution activities of the Public Prosecutors in the context of drugs-related crime. Case laws and guidelines allow for the Police in the Länder to establish their own operational priorities with regard to combating drugs. National guidelines and strategies also exist in the form of the 1989 National Plan to Combat Drugs, the 1994 National Internal Security Programme and the Action Plan of 1997. The 1994 National Internal Security Programme called for a multi-disciplinary approach to drug trafficking, whilst the 1997 Action Plan set out aims and priorities.

2.2. Prosecution Services and Judges

2.2.1. Specialised departments of prosecutors concentrating in combating drugs-related crime have been set up in all 16 Länder. In some cases, specialist departments also deal with cases involving organised crime and there are occasions when a central office will co-ordinate such work throughout the Land. The courts do not have any special judicial bodies to hear criminal proceedings for drug trafficking. However, In the case of larger courts, the court's own internal allocation of cases sometimes results in special responsibilities for individual judicial bodies, especially in the area of drugs crime. Prosecutors who work in the specialised teams have no special powers relating solely to this type of crime.

2.2.2. Under the Code of Criminal Procedure, police and customs officers are able to start investigations at their own initiative but have to report to the Prosecution Service who have judicial control of proceedings. The Code of Criminal Procedure, also provides for an investigating Judge to give prior authority for certain coercive measures such as the computerised search for wanted persons by means of descriptive profiles, telephone surveillance, and the use of technical surveillance equipment. When delay would be prejudicial, the Prosecution Service and in exceptional cases the police or customs can give provisional authority subject to later confirmation by a Judge. Only the Prosecution Service and the courts may agree to the use of undercover agents.

2.3. Police Authorities

2.3.1. The basic structure and role of the BKA was referred to earlier in this report (see 2.1.5.).

2.3.2. At local level, each Bundesland has its own separate police force (LKA and local police offices) and is entitled to determine individual policing policies and priorities. It follows therefore, that there are differences between the police forces of the different Länder, not only in policy areas but also in structure and resources.

2.3.3. To encourage uniformity and consistency, the Ministers of the Interior for each Bundesland together with the Ministers for Justice, hold regular meetings on matters of mutual interest.

2.3.4. Another unifying feature of the Länder policing systems is that they undertake common duties in terms of investigating, prosecuting and preventing crime and carry out specific tasks deriving from laws with common jurisdiction. The uniform legal basis for the police forces of the Länder derives from the Criminal Law and the laws on criminal procedure. Thus, under the Code of Criminal Procedure, the police are obliged to investigate criminal offences and to give all instructions, which do not permit delay to prevent the suppression of evidence (principle of legality).

2.3.5. Within the Länder, the Criminal Police (Kriminal Polizei) are usually responsible for the investigation of serious criminal offences including organised crime involvement in drugs-related crimes. Specialist bodies to combat organised crime and other specialist teams within the Criminal Police are regularly supported by special units such as surveillance teams covert investigators and undercover police officers and by technical support teams.

2.3.6. Drug-related crime involving consumption-related offences or low-level dealing is investigated by local basic police units.

2.4. Customs Authorities

2.4.1. The BMF is responsible for the customs authorities. The customs structure comprises 21 local offices spread throughout Germany but there are plans to reduce this to about 8. Each local office has a 'Customs Investigation Service' (Zollfahndungsamt) to support the work of the general

customs personnel. The Customs Investigation Service is specifically responsible for combating cross -frontier drug trafficking and comprises about 2,660 staff.

2.4.2. The ZKA operates at national level and provides an analytical and intelligence role. The ZKA can co-ordinate investigations by the Customs Investigation Offices and acts as a central unit for the international exchange of information between customs administrations. Its principle aims are to provide support for investigations, to study trends and to develop strategies to combat drug smuggling.

2.4.3. To cater for the specific features of sea container traffic, special "container" surveillance teams have been set up at each of the Customs Investigation Offices in Bremen and Hamburg with an overall total of 25 staff.

2.4.4. Special surveillance teams to combat drug trafficking have been set up at nine German airports in all. Organisationally, they form part of the staffing of the local customs office and form a link between local customs personnel dealing with passenger / goods clearance and the Customs Investigation Service. These teams have about 200 staff altogether.

2.5. Joint Police and Customs Structures

2.5.1. In almost all Länder, multidisciplinary investigation teams have been set up for combating organised crime and drug-related crime (see 5.1.2.).

2.6. Training

2.6.1. The BKA offers technical drugs training for all police and customs agencies involved with combating drugs trafficking. This includes, units of it's own personnel in the BKA, the police forces of the Länder, the Federal Border Guard (Bundesgrenzschutz or BGS), customs personnel and even some neighbouring states. The technical training offered includes the following courses:

* 2.6.1.(1) Special course on drug-related crime

This is a two-week course aimed giving course participants the capacity to understand the prevailing laws, technical issues and practical problems/solutions in combating drug-related offences.

* 2.6.1.(2) Seminar on Drug-Related Crime

This is a 1-week course aimed at providing an up-to-date picture of the drug situation in a multi-disciplinary context. Amongst items covered are the exchange of experience and good practice, current legal issues and solutions to potential problems in combating drug-related offences.

* 2.6.1.(3) Special Course on Synthetic Drugs

This is very much a practical course aimed at enabling Officers to implement and use their specialist knowledge and to pass on advice to others.

2.6.2. The customs authorities organise specialist drugs training for their own personnel which is given according to the needs of an individual in terms of his or her experience and the type of work to be undertaken. Courses include: basic and advanced instructions on "Combating Drug -Related Crime"; "Precursor monitoring/Synthetic drugs"; "Financial investigations"; "Confiscation of assets" and the "Use of informants".

2.6.3. Training for the Customs Investigation Service is not formally co-ordinated with other law enforcement bodies. However, other bodies are notified of the individual programmes so that they can take them into account in their own planning. It is also normal practice to send officials on courses organised by other agencies and to invite experts from other agencies to take part in one's own courses.

2.6.4. Länder police personnel engaged in combating drugs trafficking are invited to attend training programmes set out in the BKA syllabuses, which have been agreed by the "Working Party of Heads of Länder Police Offices with the Federal Police Office". The training is organised by the BKA who work in partnership with the Länder police and other agencies. The courses are flexible

and take account of local priorities and needs. Subjects covered by the training include the criminological, medicinal, chemical and biological aspects of tackling drug abuse, as well as specific topics such as the Precursor Monitoring Law, controlled deliveries, international and inter-departmental co-operation, covert investigations and financial investigations. Apart from the BKA training programmes, most Länder offer their own special courses on drug crime and on organised crime.

2.6.5. In terms of crime analysis training, the BKA, the BGS and the police forces of the Länder jointly organise courses on the principles and methodology of analysis with regard to operational as well as strategic analysis.

2.6.6. A new specialised training programme for crime analysts is currently being developed by the Bund-Länder project group, "Police Analysis and Information".

2.6.7. The German Judges Academy (Deutsche Richterakademie) organises training functions at national level for Judges and prosecutors, which also includes matters relating to drug trafficking. Individual Länder also organise conferences for prosecutors and judges on the subjects of organised crime and the fight against drug-related crime. Such conferences also provide a platform for the exchange of experiences with the police to improve working practices. There are also opportunities for judges and public prosecutors to take part in occasional seminars and workshops organised by the police.

2.7. Monitoring

2.7.1. Management audits at federal level are carried out by the Federal Audit Office (Bundesrechnungshof) accordance with its own assessment of subjects that need examination.

2.7.2. The Conference of Ministers for the Interior (Federal and Länder levels) meets regularly to seek common procedures in basic questions of security policy, including the evaluation of the implementation of joint decisions. Such evaluation includes the implementation of the 1989 National Plan to Combat Drugs, which is reviewed annually.

2.7.3. At Länder levels there are various constitutional and administrative mechanisms to review and evaluate the implementation of policies and procedures.

2.7.4. As part of their responsibility for staff and organisation, the heads of the various police authorities and their subordinate managerial staff aim for an effective and economical use of material and staff resources. Exceptionally, permission for large expenditure on some cases of combating organised drug-related crime must be agreed first and authorised by the Ministry of Interior in the Bundesland concerned.

2.7.5. New "management instruments", based on business principles, such as quality management, cost-benefit calculation, budgeting and cost-control, are being introduced into some Länder administrations. In a similar manner, the Customs authorities are piloting a cost control scheme in Hamburg, which should aid effective evaluation techniques.

2.7.6. At a practical operational level, federal guidelines on co-operation between the prosecution service and the police in combating organised crime, facilitates the monitoring of how resources are used. For instance, in cases where large-scale investigations are involved, the necessary investigative and executive action is performed in close co-operation with the appropriate public prosecutor who exercises judicial control. This helps to direct resources effectively and efficiently.

2.7.7. The BKA have the following methods for monitoring activity:

- * 2.7.7(1) In the OA, guidelines have been established with regard to the adoption and conduct of investigations. The department has also produced a list of operational priorities as a flexible guide for its staff.
- * 2.7.7.(2) Before an investigation starts, officers have to refer to checklists, so that a certain degree of control can be exercised.
- * 2.7.7(3) Every quarter, the investigation departments have to draw up reports with the identification numbers of all current investigations. In the near future, department heads will personally check and review the investigation reports.

- * 2.7.7.(4) Each department has introduced area budgeting which combines case responsibility with financial responsibility.

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PART 3

3. INTELLIGENCE

3.1. Data Banks

3.1.1. German law enforcement agencies have access to many and varied sources of information both nationally and internationally. However, for reasons of data protection, only partial automatic mutual online access is allowed between customs, the police and the judicial authorities. Exchange of data in individual cases is possible in the context of certain joint tasks and authority to communicate personal data is based fundamentally on the "same-purpose" principle. This means that personal data may only be communicated for the same purpose as that for which it was collected and stored.

3.1.2. The BKA has the authority to collect and store personal data. The Law on the Federal Police Office sets out the rules for operating and working with central databases. Exchange of data between the police forces of the Federation and the Länder for the purposes of mutual assistance in the performance of police work takes place via traditional means of communications and via the electronic police information system. Other agencies tasked with border duties such as the Federal Border Guard and the Customs Investigation Service are entitled to take part in the electronic police information system.

3.1.3. The responsibility for ensuring that communication of data is permissible under data protection legislation lies with the department, which collected or requested the data for a given purpose.

3.1.4. Some personal data, which is stored in databases, require a high degree of protection. This data may only be entered, changed or communicated by specially authorised persons. Furthermore, some of the records obtained in the course of investigations by the specialised drugs and organised crime units are not entered in the Bundesland or federal organised crime and drugs data banks until the investigation has been concluded. The reason for this is to preserve the confidentiality of investigations and to protect particularly sensitive data.

3.1.5. Some databases do not have data protection problems with regard to access. For example, all law enforcement agencies have access to the 'Central Register of Aliens' (Ausländer Zentralregister or AZR) database which contains information on aliens who are staying in the Federal Republic for more than 3 months. The 'Federal Vehicle Office' (Datei des Kraftfahrtbundesamtes or ZEVIS) database is another example and contains information supplied by the vehicle registration offices.

3.1.6. The BKA and its counterparts in the Länder (Ländeskriminalämter) collate information with regard to all drug-related crimes. More specifically, information, which is referred to the BKA, includes seizures at national and international levels, trends, smuggling routes, cases of delinquency linked to drug dependence and consequential crime, deaths and money laundering cases. Information relating to particular cases is entered into a case database, which is drawn on as a source of information for drawing up situation reports.

3.1.7. At Bundesland level, information is exchanged via internal publications (situation reports, statistics, analyses, information sheets, specific reporting services).

3.1.8. In the case of the customs authorities, the ZKA provides an analytical and intelligence function from a national perspective. Its principle aims are to provide support for the 'Customs Investigations Service' in the regional offices and to develop strategies to combat drug smuggling. There is a continual exchange of information with other law enforcement agencies about new projects and results of current investigations. In this regard, constantly updated summary of current projects is prepared. At international level, customs utilise the "Mar/Yacht-Info" system for sea traffic, the "Cargo-Info" system for air traffic and the "Balkan-Info" system for road traffic. Up to thirty-two States participate in each of these information systems which provide up-to-date information about smuggling methods and seizures. Information is also made available to other law enforcement agencies.

3.1.9. The prosecution services have access to the "Central Federal Register" (Bundeszentralregister) which stores information about convicted persons. Additionally, they also occasionally have access to the Central Traffic Register and the Central Register of Aliens and in specific cases to private information services. Moreover, the analysis and situation and progress reports prepared by the police and customs authorities are as a rule brought to the attention of the

prosecution service. A central register of proceedings for the prosecution service is currently being designed. It will store details on pending cases and those completed but not yet forwarded to the Central Federal Register. In individual Länder, similar registers of proceedings already exist.

3.1.10. The "Joint Customs/Police Drugs Investigation Teams" (Gemeinsame Ermittlungsgruppen Rauschgift-kriminalität or GER) have no direct access to the databases of the other body in each case, but can via their representatives in the investigation teams in the context of legal arrangements obtain information in relation to an individual case.

3.2. Use of Data by Police and Customs

3.2.1. Some examples of the way in which data supplied by investigating federal and Länder police authorities is utilised by the BKA, are as follows:

* 3.2.1.(1) Drugs Situation Report and Drugs Annual Report

The annual German Drug Situation report gives an assessment of current developments and expected future trends. This report is confidential but an open version in the form of the Drugs Annual Report is made accessible to the public.

* 3.2.1.(2) Half-yearly and yearly brief analysis

The half-yearly brief analysis is an interim report on current developments in the area of combating drug-related crime. The yearly brief analysis gives up-to-date information on the most significant statistics of the previous year and appears towards the end of the first quarter of the year.

* 3.2.1.(3) "RG-Kurier"

The quarterly publication "RG-Kurier" presents current trends in combating drug-related crime. It is distributed among a wide range of national law enforcement authorities. The same recipients are informed about important investigations and seizures.

* 3.2.1.(4) Weekly telexes

A weekly telex is disseminated to relevant staff providing up-to-date information about important seizures or trends.

* 3.2.1.(5) Database of marks "hashish" and "heroin" and "cocaine"

This database provides assistance with regard to identifying the origin drugs.

* 3.2.1.(6) Development of a database on the Concealment of Drugs

A database, which collates examples of the concealment of drugs, is being developed. It will provide hints and aids to staff concerned with the search and detection of drugs.

* 3.2.1.(7) Balkan route report

This is an annual report on seizures, prominent cases and new developments in connection with the Balkan route for the assistance of law enforcement staff.

* 3.2.1.(8) PIOS/APR data base

Under the CAPE analysis programme, amphetamine derivatives from seizures effected by the police and the customs authorities are submitted to the BKA and subjected to forensic comparison and testing for links between individual seizures and cases. The investigation results are put at the disposal of the Länder criminal investigation police (Landeskriminalämter) and the Cologne Customs Criminal Investigation Office (ZKA) in the PIOS/APR database for inquiries and to support investigations in progress.

Similar databases are employed by the ZKA.

3.2.2. Statistical and trends analysis on drugs-related crime is also used to inform and direct both operational and strategic considerations. One example is the "Anadolu" project, which has developed a database to trace and identify persons concerned in Turkish heroin trafficking.

3.3. International Sharing of Data

3.3.1. The legal bases for the exchange of information with foreign law enforcement agencies are the multilateral and bilateral conventions and agreements ratified by Germany. The multilateral agreements include:

- European Convention on Mutual Assistance in Criminal Matters of 20.4.1959 and the Additional Protocol of 1978
- Schengen Convention of 19.6.1990
- Europol Convention of 26.7.1995
- UN Convention on Narcotic Drugs of 20.12.1988.

3.3.2. In bilateral agreements between the Federal Republic of Germany and other States, more far-reaching arrangements have been made. For example, a treaty was recently signed between Germany and Switzerland to increase cross-border police and judicial co-operation. Consideration is currently being given to using this experience as a model for revising existing treaties with other German speaking neighbouring States.

3.3.3. The transmission and exchange of information with foreign law enforcement agencies in the framework of police and judicial assistance is governed by Federal and Länder legislation. The key texts are Federal laws such as the Law on International Assistance in Criminal Matters (IRG) of 23.12.1982, the Law on the Federal Police Office of 7.7.1997 and the law implementing the Europol Convention.

3.3.4. Provisions of Länder law, in particular the Länder police laws, also include prevention-oriented specific rules on data gathering, data storage, data use and data transfer which are applicable to foreign authorities.

3.3.5. The exchange of so-called "soft data" within the communication channels provided for in law is possible where, in the context of prosecution of an offence at least a suspicion exists, or where the purpose of the exchange is the prevention of criminal offences.

3.3.6. Personal data may also be sent to foreign police and judicial authorities. In this case also, the "same-purpose" principle (see 3.1.1.) must be complied with. Such data may not be communicated if it would contravene German law, or where interests of the person concerned which merit protection would be harmed; Moreover, such data would not be communicated where appropriate data protection is not guaranteed in the recipient country.

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PART 4

4. SPECIAL INVESTIGATION TECHNIQUES

4.1. Financial Investigations - Legislation and Guidelines

4.1.1. In Germany, financial investigations, meaning investigations to trace and take possession of proceeds from criminal offences, may supplement conventional prosecutions intended primarily to convict a criminal. Pilot schemes are being carried out at present in a number of Länder to separate financial investigations from conventional prosecutions. For this purpose, the public prosecution service, the police and the customs authorities carry out financial investigations making use of specially trained and qualified staff.

4.1.2. The Code of Criminal Procedures provides for temporary measures to secure assets where confiscation of assets is possible in the context of criminal proceedings. Assets (objects or rights) that are subject to forfeiture or confiscation may be secured through formal seizure. Where a decision on forfeiture or on confiscation of equivalent value is possible, an attachment order may be issued. These safeguards are possible from the start of investigations until a judgement becomes final. The financial gain derived from an offence may be clawed back through a declaration of forfeiture.

4.1.3. When it comes to organised crime, particularly commercially-based drug-related crime committed for profit, both the Penal Code and the Narcotics Law provide for reduced requirements to produce evidence for the forfeiture of assets. The forfeiture of assets may proceed if a judge is satisfied that they have been used for or are the proceeds of an unlawful act. That the assets are of illegal origin is sufficient. Proof that an asset has been obtained through a specific and proven criminal act is not necessary. If the asset obtained is no longer physically available, a sum of money equivalent in value may be demanded in forfeiture (the so-called "replacement value"). An order of forfeiture transfers ownership of the property to the State. The Federal Constitutional court is currently examining whether these simplified requirements for forfeiture of assets are compatible with the constitution.

4.1.4. The Public Prosecutors Office is required to observe tax secrecy when carrying out financial investigations because of a drug-related crime or when obtaining financial information from the financial authorities. Tax secrets can be revealed but only in exceptional cases in response to a compelling public interest, particularly for the purpose of prosecuting serious criminal offences.

4.2. Financial Investigations - Competent Authorities

4.2.1. Under the Code of Criminal Procedure, power to issue an order securing property connected with an offence or any of the offender's assets not connected with the offence lies in principle with a judge. Where any delay would be prejudicial, the Public Prosecutor's Office may also issue the order. However, it then needs to be confirmed by a judge within one week. The Public Prosecutor's Office is in principle empowered to enforce the order.

4.2.2. Both the police and customs authorities are competent for leading financial investigations.

4.2.3. The police employ specialist financial investigators responsible for combating money laundering and separate specialist operational units dealing in the confiscation of assets. Both types of investigators are deployed in all Länder and in the BKA.

4.2.4. To assist with combating money laundering, an inter-departmental "Police and Customs Financial Investigation Service" has been formed. For the purpose of confiscation of proceeds, lawyers or public prosecutors, auditors and accountants with special responsibility in this area have also been included in this combined approach. Asset investigators provide their support as and when appropriate.

4.2.5. In some Länder, such as Lower Saxony, Baden-Württemberg and Berlin, the financial investigators and/or asset confiscation officers become fully involved in investigations by the specialist services from the moment a drug investigation is initiated, so that they can contribute their special knowledge as part of an integrated procedure.

4.2.6. In 1999 about 600 trained financial investigators and asset confiscation officers were put in place at Federal Government level and in the Länder. Special offices for financial investigations have since been set up in all Länder.

4.2.7. All 16 Länder have introduced Financial Intelligence Units (FIU's) and from June 2000 a joint database on suspicious transaction reports was introduced to co-ordinate activity. Formerly, there was no exchange of information on personal law enforcement data with foreign administrative FIU's. However, the evaluation team was informed that a new interpretation of Article 14 of BKA law now enables the German authorities to exchange information in such circumstances.

4.2.8. In 1999 at Federal Government level and in the Länder, assets provisionally totalling about DM 440 million were secured in the course of both integrated and separate financial investigations and by confiscation following seizure and forfeiture orders in all areas of criminal activity. Furthermore, assets with a value of approximately DM 2.1 million were seized by the BKA arising from various drug investigations.

4.3. Controlled Deliveries

4.3.1. The Europol Manual on Controlled Deliveries gives a full description of Germany's commitment to and implementation of policies in this specialist area.

4.3.2. The contact details (Central Offices) of the responsible police and customs authorities in the European Union, the Schengen countries and the Central and East European countries and the Baltic States are given in Europol's "EU Manual on Controlled Deliveries". When initiating controlled deliveries, contacts are made with the relevant law enforcement authorities abroad (police or customs depending on the country) via the Central Offices listed. Further proceedings (e.g. telephone taps, observation, background investigations) are then arranged and co-ordinated directly between the relevant local law enforcement authorities in each country.

4.3.3. The BKA facilitates the preparation of controlled deliveries through contacts mainly via its own liaison officers and co-ordinates the procedure.

Controlled deliveries by the German Customs Investigation Service abroad are normally arranged with the collaboration of the ZKA, which makes direct contact with its partner service abroad, or the Central Office.

4.3.4. Hitherto, Europol has only rarely been involved in controlled deliveries in appropriate cases.

4.3.5. During 1999, Germany undertook 165 controlled deliveries to other Countries. Although this is a significant amount, it is recognised that considerable international difficulties remain due to differences in, legislation, competencies, undercover working guidelines, technology, languages and training.

4.3.6. Cases where drugs are substituted in whole or in part by legal substances are possible in German law but practical considerations have mitigated against this as an effective law enforcement tool and experience of such instances are rare.

4.3.7. Controlled money deliveries, understood as money transactions (usually 'cashless') carried out with the knowledge and under the supervision of the law enforcement authorities for the purpose of identifying the ringleaders behind criminal offences as the money is transferred, are permissible in law. Bank staff asked by the Public Prosecutor's Office to help arrange such transactions are not themselves held to be guilty of money laundering. However, there is no practical experience in this area.

PART 5

5. CO-ORDINATION AND CO-OPERATION

5.1. Co-operation at National Level

5.1.1. The rules and limitations regarding the working relationship between the Customs and Police are based on the National Anti-Drugs Plan of 13 June 1990 and the co-operation guidelines formulated at the 1991 Conference of Ministers for the Interior.

5.1.2. In almost all Länder, multidisciplinary investigation teams have been set up for combating organised crime and drug-related crime. They include the GER, the Joint Financial Investigative Teams for combating money laundering (Gemeinsamen Finanzermittlungsgruppe or 'GFG'), and the Joint Financial Investigation Clearing Houses (Gemeinsamen Clearingstelle Finanzermittlungen or 'GCF'). In addition to these joint teams there is a general co-operation between the BKA, the ZKA and Länder criminal investigation police (Landeskriminalämter).

5.1.3. Other examples of co-operation between customs authorities and the BKA are a joint precursor monitoring unit ('GÜS', forming part of the "Police Monitoring System") and a planned office to assist with the confiscation of assets called the "Process-integrated Confiscation of Assets" (or 'VIVA').

5.1.4. At border crossing points to Poland, the Czech Republic, Switzerland and on the coast, customs officials jointly process travellers with the BGS. At the 'green border' with Poland and the Czech Republic both organisations co-operate extensively in terms of undertaking patrols, sharing of equipment and the planning of operations. Any seizures of drugs at border crossing-points and on the green border by the BGS are handed over to the customs to be dealt with.

5.1.5. The border customs service also co-operates closely with the police forces of the Länder. Both take part in joint control activities, exchange operational information and assist each other with searches. The Länder of Baden-Württemberg, Berlin, Hamburg, Hesse, Mecklenburg-Western

Pomerania, Lower Saxony, Rhineland-Palatinate, Saxony and Schleswig-Holstein have formalised co-operation between the Customs authorities, the BGS and the Länder Police by means of security co-operation agreements or co-operation-intensifying agreements. These voluntary agreements are aimed in particular at enhancing crime prevention and prosecution.

5.1.6. Co-operation between the Prosecutor's Offices of the Länder in the field of narcotics connected with organised crime takes place in some cases via organised crime contact points. In addition, the Prosecutor's Offices co-operate in individual proceedings. No special forms of co-operation exist between the courts.

5.1.7. Co-ordinated co-operation between specialist sections of the Public Prosecution Services and the police or customs authorities, in particular with their special units such as the joint drugs investigation teams, takes place as the need arises in individual investigations. Co-operation between the Public Prosecution Service and the customs and police is generally regulated by the Code of Criminal Procedure and by separate guidelines in the Länder. A specific federal guideline of the Ministers and Senators for Justice and the Ministers and Senators for the Interior of the Länder sets out rules for co-operation between all three law enforcement agencies in prosecuting organised crime. The guideline states, for example, that the Prosecution Service and police should, in individual cases and in general, co-operate very closely and keep each other informed from an early stage in the investigation proceedings.

5.1.8. In Baden-Württemberg a joint drugs team has been set up by the prosecution service and the Criminal Investigation Department with the aim of tackling 'misdemeanours' below the level of what constitutes 'serious crime'. The aim of this initiative is to try and eradicate drug misuse at an early stage.

5.2. Co-operation at International Level

5.2.1. Both the police and customs maintain channels of communication with their law enforcement counterparts in other States. The BKA has arrangements for the international exchange

of information on drugs offences via the 'X-400 Interpol System'. The customs authorities maintain rapid communication with their counterparts in countries that participate in the 'Customs Information Systems ' which comprise the 'MAR/YACHT-INFO' database for sea traffic, the 'CARGO-INFO' database for air traffic and the 'BALKAN-INFO' database for road transport. The countries taking part undertake to notify a 'central office' (ZKA) of current drugs seizures and pass on the latest information about potential drug consignments. The central office ensures that the information is passed on to all relevant parties and produces an analysis of the overall situation. Within the EU and to some extent outside it the electronic Anti-fraud Information System (AFIS) is increasingly used.

5.2.2. No bilateral or multilateral agreements with Member States or other States for arrangements under Article 9, paragraph 1 (c) of the 1988 UN Convention have been undertaken. Joint prevention and law enforcement strategies and any problems arising are discussed, with special attention being given to regional characteristics, in existing working groups such as the south-west working group or the German/Netherlands working group.

5.2.3. As far as the BKA is concerned, the main channels used for the exchange of information are Interpol, Europol and the Liaison Officers (LO's). Other authorities such as the Drugs Enforcement Agency (DEA) and the German Foreign Office are also used. The criteria for choosing the relevant information channel include speed, reliability.

5.2.4. As far as customs is concerned, the bilateral and multilateral mutual assistance agreements in the customs area is usually sufficient to allow for direct contacts with partner services abroad. No figures are available for this or for the use of liaison officers.

5.2.5. The existing rules on mutual legal assistance are applicable with regard to international co-operation in the field of Justice. Information is initially sought via Interpol, the BKA or the Landeskriminalämter, in particularly urgent cases. The European Judicial Network and contact points are used for the exchange of information. In specific cases, the Europol Liaison Office is used. In addition, at local level there are numerous contacts with directly neighbouring states of the authorities concerned, in part through working groups in the General Prosecutor's Offices of several EU Member States.

5.2.6. Experience in exchanging information with other Member States is good. Difficulties have arisen in individual cases but these have been the exception as opposed to the norm.

5.3. Liaison Officers

5.3.1. Germany currently has 53 Officers based abroad in liaison posts. The BKA has 52 LO's and the customs has 1 liaison Officer. All of these officers are authorised to deal with and pass on information from all areas of crime and not just drug offences.

5.3.2. The BKA LO's are assigned to 40 locations in 37 countries and in the main are responsible for several countries. Apart from this multiple responsibility, it is common practice to assign specific tasks in individual cases. LO's are as a rule accredited not only in their country of assignment, but are also included on the diplomatic list of countries within their sphere of responsibility. The organisational details of their assignment are passed by the Foreign Office to the post concerned. However, LO's represent the BKA and receive their professional instructions and tasks from it.

5.3.3. The customs liaison officer is assigned to Paris with responsibility for a range of subjects including drugs. He receives his instructions from the Federal Ministry of Finance and the ZKA.

5.3.4. The BKA LO's supply intelligence for both BKA investigations and for Länder police investigations. The information concerned is passed to the BKA where it is collated with intelligence obtained internally and then forwarded to the department carrying out the investigation. Direct contacts by the investigating department concerned with the LO's is limited to urgent cases.

5.3.5. LO's are not authorised to take official action in their country of posting. Their duties are limited specifically to information gathering and information exchange between the particular departments responsible in Germany and the corresponding authorities abroad. Where special investigation techniques are used, they act as a connecting link between the departments concerned, providing support and co-ordination.

PART 6

6. EVALUATION OF THE EFFECTIVENESS OF SYSTEMS IN GERMANY RELATING TO THE FIGHT AGAINST DRUG TRAFFICKING: STRUCTURE, INTELLIGENCE, SPECIAL INVESTIGATION TECHNIQUES AND COORDINATION AND COOPERATION

6.1. General Comments

6.1.1. The experts are aware that they were only able to have a brief examination of some of the practices in a limited number of Länder and can therefore not make an overall assessment on the way that all Länder are fulfilling their obligations with regard to combating drug trafficking. The federal structure in Germany necessarily limits the number of possible solutions for problems that might occur. The team has tried, as much as possible, to take this situation into account.

6.1.2. There is much to commend in the very positive stance adopted by Germany with regard to tackling drug-related issues. Both the Federal and Länder Governments afford the highest priority to prevention and treatment and these social and health policies are underpinned by a very effective and efficient law enforcement regime. It was evident to the evaluation team that all of the practitioners interviewed were highly motivated individuals and that morale was high in all of the relevant disciplines both at Federal and Länder levels.

6.1.3. One key area where social and enforcement policies come together is in respect of the Drug Consumption Rooms or so called "Shooting Galleries". The provision of such rooms is motivated by the need to provide help and treatment for addicts. However, the evaluation team were made aware of a concern by some police officers that such premises effectively led to the facilitation of illicit drug trafficking and that this put them in an invidious position in trying to uphold the law which still deemed the possession of drugs to be a criminal offence. One prosecutor seen took a contrary view and said that according to a recent Court of Appeals decision, persons obtaining a small amount of heroin with the intent to inject the drug immediately afterwards in a Drug Consumption Room did not violate Article 29 BtMG, as they did not "possess" the drug.

6.1.4. Whilst there is no doubt that Germany already possesses and implements a range of beneficial drugs policies, it does not have a specifically appointed central co-ordinating body for the co-ordination of law enforcement efforts in the fight against drug trafficking, as mentioned in Recommendation 1 of the Action Plan to combat Organised Crime of 28 April 1997.

6.1.5. A main means of achieving consistency is the pursuit of common strategies but in this area the evaluation team found mixed results. At both Federal and Länder levels there are significant differences of quality in the way that strategies are formulated and implemented. At Federal level policies appear to be fragmented. A ‘National Plan to Combat Drugs’ was introduced in 1989. Progress against this plan is reviewed annually but it has never been updated. Revised policies regarding drug-related crime were later outlined in the National Security Programme of 1994. Furthermore, the Action Programme of the Ministers and Senators for the Interior of the Länder and the Federal Minister for the Interior of 6.6.97 supplemented policies with regard to combating organised drugs crime. At Länder level some law enforcement bodies focus their operational activities on clearly defined strategic objectives whilst others appear to rely purely on their legislative powers under the Narcotics Drug Act. The "National Plan to Combat Drugs" of 1989 is currently being updated in conjunction with the Länder and the affected social groups.

6.1.6. During their visits, the evaluation team was rightly made aware of a number of impressive statistics concerning drug seizures and confiscations by both the police and customs. In most cases the evaluation team were also told that more could be achieved given more personnel. However, most stations visited displayed a general lack of awareness of modern ‘business’ methods as a tool for achieving even better results by utilising existing resources more effectively. Following the visit, the evaluation team was notified by the German authorities that the development and extensive introduction of modern business management methods in the fight against drugs is only just beginning. They gave an example of the Customs administration, which is currently undertaking a comprehensive implementation of a system for calculating cost efficiency. Preparations for turning this system into a comprehensive tool for planning and control by objectives have commenced. They also advised the team that a systematic process for co-ordination with the Federal Border Guard regarding projects of other federal administrative authorities already exists.

6.1.7. The evaluation team did find some good examples of resource management practice at some sites. For instance, a practical approach to the backlog of casework resulting from large numbers of reported possessions has been adopted by at least one Bundesland police force. There, this work has been delegated to the local police so that the criminal police can concentrate on the larger cases of trafficking. Similarly, in the framework of the current reorganisation of the federal customs administration, minor drug offences are to be dealt with by local customs units (head of customs offices). The Customs Investigation Service is thus now in the process of focusing its activities on cases of organised drug smuggling. It is also worth noting that departments within the BKA employ a system of relating operational targets to cost.

6.1.8. Another impressive feature of the approach to combating drugs in Germany is the high degree of co-operation that exists between both the police and customs and with the Prosecution services. The success of the police and customs relationship is due in part to the existence of the Joint Drugs Investigation Teams (GER) which have proved to an effective use of resources. In the Länder of Baden-Württemberg, Bavaria, Berlin, Mecklenburg-Western Pomerania, Lower Saxony and Saxony, the joint team approach has already been extended to non-drugs areas such as immigrant smuggling.

6.1.9. The police and customs authorities in Germany enjoy well structured training events centred on their technical needs.

6.1.10. It was noted that unlike the police and customs, the prosecution and judicial authorities have no national framework or 'umbrella' organisation to ensure consistency of approach in matters relating to the training of personnel in technical areas such as organised crime, money laundering and drug trafficking. The absence of such an umbrella organisation also means that there is no structure for the co-ordination of operational casework in an international context and also in instances where more than one Bundesland is involved. On a positive note, the programme conference, a forum for federal and Land representatives and representatives of professional bodies who are concerned with further training, does provide standard, self-contained further training on a range of subjects for judges and public prosecutors at the German Judicial Academy.

6.1.11. The evaluation team was made aware of occasional problems experienced at court hearings with regard to a lack of technical and procedural awareness by Police practitioners of court procedures.

6.1.12. Both the Police (BKA) and Customs (ZKA) authorities have centralised and comprehensive intelligence data systems. Both also appear to have sufficient resources with the necessary hardware to utilise the intelligence gathered. However, the evaluation team discovered that this picture is not always reflected at local practitioner levels. In certain areas there appeared to be a significant gap between central systems and local practice.

a) At the customs station at Frankfurt/Oder, the customs personnel specifically pointed out to the team the need for better quality intelligence from their own Investigation Service. The customs personnel at Frankfurt/Oder also said that they have no local access to computer databases and that their risk analysis profiles are manually produced which is slow and inefficient.

b) The Customs personnel at Frankfurt International Airport share the same problems as their colleagues at Frankfurt/Oder. Additionally, the evaluation team learned that there is no forum for the exchange of trends or intelligence with the customs counterparts at other German airports. The local 'Customs Investigation Office' has recently formed a 'Detection Investigation Support Team' at the airport to provide intelligence to the local customs personnel. However, the team consists of only two persons who are not wholly dedicated to intelligence gathering as they combine this task with their normal investigation duties. Furthermore, neither has received any training and they do not have access to any dedicated intelligence databases.

6.1.13. In a wider context of intelligence sharing, the initiative to set up a computerised records system for customs purposes in the European Union Member States was discussed. This project is currently under discussion by the Working Party on Customs Co-operation in the Council of the European Union. Clear potential benefits could be seen to the gathering of intelligence if and when such a system could be introduced.

6.1.14. It was clear to the evaluation team that the customs authorities in particular consider that data protection laws mitigate against effective and legitimate intelligence gathering techniques. One example given was the lack of data provided by airline companies at Frankfurt airport with regard to freight so that the customs have a reduced means of risk assessment.

6.1.15. With regard to specialist investigation techniques and financial investigations, Germany has established central FIU's (clearing houses) in the 16 Länder. In June 2000 a joint data base on suspicious transaction reports was established to enhance effective co-ordination and to ensure fulfilment of Germany's obligations under a Council Decision outlined in **CRIMORG 134 (12038/00)**.

6.1.16. As already noted in this report (see 4.2.7.), there was previously no facility for the exchange of information on personal law-enforcement data with foreign administrative FIU's. However, the evaluation team was informed that a new interpretation of Article 14 of BKA law now enables the German authorities to exchange information in such circumstances. Although this is a step in the right direction, the team was also told that there continue to be problems within Germany with regard to the efficiency and effectiveness of information exchanges between the 16 FIU's.

6.1.17. A number of specialist financial practitioners referred to the confiscation laws in Germany as being extremely complicated. However, they considered that improved training for law enforcement officials as well as for prosecutors would greatly enhance undertakings.

6.1.18. With regard to other specialist investigation techniques, the evaluation team was impressed by the large numbers of controlled deliveries executed by the German authorities to other Countries. In 1999, they undertook 165 controlled deliveries, which was significantly more than most other European Union Member States. The team was told that there is a perception that there are no clear guidelines for operating controlled deliveries in some Member States and that they are inconsistently adhered to by prosecutors offices in those countries.

6.1.19. The most effective means of conducting controlled deliveries is by air transport and during such operations the drugs are always monitored by accompanying Officers. When only small quantities of drugs are involved, it is not always possible or cost effective to accompany the drugs. However, much useful intelligence can often be gathered even from the delivery of such small quantities. The evaluation team was told that there is resistance from some airlines but in particular from 'Lufthansa' in agreeing to accept unaccompanied controlled deliveries.

6.1.20. Very clear legal and practical guidelines are in place concerning the deployment of undercover officers and the control and use of informants.

6.1.21. Internationally, Germany has adopted a very proactive approach to combating drugs trafficking. An example of this is the 'Anadolu' project developed by the BKA, which has built up an impressive database on tracing and identifying persons concerned in Turkish heroin trafficking. An expert group from four countries directly affected by heroin flows from Turkey now meet regularly under the umbrella of 'Anadolu' to exchange information.

6.1.22. During the course of their examinations, the evaluation team visited the customs station at Frankfurt/Oder . This station is the biggest land based customs station in Germany and is located on the border with Poland which is part of the so called 'Balkan Route' for heroin trafficking from the East. The team was surprised to learn that there is currently little or no co-operation with the Polish authorities with regard to drug trafficking. One result of this lack of co-operation has been the total absence of controlled deliveries from Polish territory into this part of Germany.

6.1.23. All questions asked by the experts during the evaluation were related to one degree or another to various international instruments relating to co-operation between law enforcement authorities on a national and international level with regard to drug trafficking. Unless specifically commented upon within the report, the experts were assured that all actions concerning the following related instruments have or are in the process of being adopted:

- The Action Plan to combat organised crime of 28 April 1997

- The Joint Action of 14 October 1996 (concerning liaison officers)
- The Joint Action of 29 November 1996 (concerning co-operation between customs authorities and business organisations)
- The Council Resolution of 29 November 1996 (concerning drug tourism)
- The Joint Action of 17 December 1996 (concerning approximation of laws and practices)
- The Joint Action of 9 June 1997 (concerning targeting criteria and collection of customs and police information)
- The Joint Action of 16 June 1997 (concerning synthetic drugs)
- The Joint Action of 3 December 1998 (concerning money laundering)
- The United Nations Conventions of 1968, 1978 and 1988.

6.2. Possible Improvements

All of the suggestions made in this part are the result of the discussions undertaken with the representatives of the Ministries who were seen during the evaluation visit to Germany. The evaluation team realises that some of the suggestions are based on experiences with other legal systems and traditions and that all of them might not fit into the German system. Several of the suggestions made are of a minor nature, but some may be considered to be more fundamental. The experts have of course not considered resource implications in making these suggestions.

6.2.1. Structure

a. There is no specifically appointed central co-ordinating body in Germany for the co-ordination of law enforcement efforts in the fight against drug trafficking, as mentioned in Recommendation 1 of the Action Plan to combat Organised Crime of 28 April 1997. The evaluation team received different opinions on this matter. Some key stakeholders believe that their Federal structure, which facilitated individual interpretation and implementation of policies, mitigated against the concept of a central co-ordinating mechanism. Others including the evaluation team consider that such a mechanism could be designed to maintain Federal State sovereignty whilst enhancing and promoting the spread of consistency through good practice.

b. At Federal level there is a 'National Plan to Combat Drugs' . This National Plan has been indirectly supplemented by other programmes and action plans with regard to drug related crime and organised crime but the National Plan itself has not been updated since 1989. This could send the wrong perception that drugs are not a current issue. The evaluation team considers that the plan should be reviewed , revised and re-launched to bring fresh awareness to the importance of combating drugs. At Länder level some law enforcement bodies followed clearly defined strategic objectives whereas others did not . The evaluation team is of the opinion that at regional level, police and customs authorities should co-operate better in the formulation of strategic objectives which can be measured and evaluated to ensure consistency and effectiveness.

c. Most stations visited displayed a general lack of awareness of modern 'business' methods as a tool for achieving even better results by utilising existing resources more effectively. In one Customs station visited they were unable to give a breakdown of staff allocated to tackle drug trafficking. Some positive improvements have already been made (see 6.1.6). However, the evaluation team believes that a great deal of improvement still needs to be made by the introduction of modern management planning systems, which link the setting of operational targets to performance measurement systems and to resource management techniques .

d. Good examples of good resource management practice in connection with the possession of drugs are to be found at drugs departments of the Länder offices of criminal investigation (LKA). The work pertaining to such offences has been delegated to the local police, to enable the drugs departments of the LKA to concentrate on more major cases of drugs trafficking. The administrative reorganisation of the federal customs authorities, which is currently in progress, provides for minor violations of the law on narcotics to be dealt with by local customs offices (main customs offices). In the implementation phase, the activities of the Customs Investigation Service will then focus on cases of organised drug trafficking.

e. The existence of Drug Consumption Rooms is one alternative initiative, which engendered conflicting opinions and views from persons seen during the visit. Following the visit, the evaluation team was advised by the German authorities that regulations are in force, which lay

down minimum standards for safety and supervision in connection with the use of drugs in such rooms. They also advised that these regulations cover forms and methods of co-operation with the local authorities responsible for law and order and security with a view to preventing, as far as possible, offences in the vicinity of these rooms. However, the experts believe that in addition to the regulations, the Police and Judicial authorities should formulate and agree practical working guidelines governing the control of Drug Consumption Rooms with regard to law and order issues. This would go a long way towards avoiding the evident confusion that currently exists (see 6.1.3.)

f. The evaluation team was surprised to learn that the Zentralstelle für Betäubungsmittelkriminalität (ZFB) at the Prosecution Office in Frankfurt is not a central body but formed and run at the initiative of the Bundesland in Hessen for the benefit of other Länder. Germany has no national framework or umbrella organisation that undertakes basic and further training in connection with organised crime, money laundering and drug trafficking. The absence of such an umbrella organisation also means that the co-ordination of operational casework (at judicial level) in an international context and also in instances where more than one Bundesland is involved may be more difficult. In spite of the absence of such structure, some excellent work has been produced (see 6.1.10.). The Programme Conference, an assembly of representatives concerned with further training from the Federal Government, the Länder and the professional associations, nevertheless guarantees a uniform, self-contained further training programme for judges and public prosecutors at the Deutsche Richterakademie (German Judiciary Academy).

g. It was suggested that police officers should undergo better Court awareness training. It was stressed that there was no wish to coach officers in giving their evidence but to inform them of procedures for the enhancement of professionalism and the smoother running of procedures.

6.2.2. Intelligence

a. On account of the legal situation in Germany, in isolated cases it is difficult to obtain the personal data required for investigative purposes. One example given was the lack of data provided

by airline companies at Frankfurt airport with regard to freight so that Customs have a reduced means of risk assessment. The evaluation team considers that Customs should instigate communication channels with the relevant trade areas to agree working guidelines and Memorandums of Understanding.

b. The 'Anadolu' initiative (see 6.1.21.) is an example of good practice, which is deemed worthy of wider circulation. Not only is it a useful tool in combating drugs trafficking but it is also a model for how to plan, develop and implement intelligence-based projects.

6.2.3. Special Investigation Techniques - Financial Investigations

a. Germany has recently introduced a joint database on suspicious transaction reports for the coordination of its 16 FIU's in the Länder plus the FIU within the Bundeskriminalamt and a new interpretation of Article 14 of BKA law now enables the authorities to exchange personal law-enforcement data with foreign administrative FIU's. However, one practitioner seen during the evaluation said that problems remain with regard to the efficiency and effectiveness of information exchanges between the 16 FIU's. It is the view of the team, that Germany should review this situation to ensure that any problems are identified and dealt with.

b. Confiscation issues are dealt with both in courses organised by the German Judicial Academy and in the further training provided by the Länder. However, greater emphasis on further training for law enforcement officers in German confiscation law, which is regarded as extremely complex, was in part favoured.

6.2.4. Special Investigation Techniques - Controlled Deliveries

a. The evaluation team was impressed by the large numbers of controlled deliveries consistently executed by German authorities to other Countries and which are often significantly more than other European Union Member States. Although there are a number of unique reasons why Germany's figures are so high, it is considered that it would be a useful exercise for all Member States to review and evaluate the effectiveness of their policies relating to controlled deliveries.

b. It was referred to earlier in the report (see 6.1.19.) that in Germany there is resistance from some airlines but in particular 'Lufthansa' in agreeing to accept unaccompanied controlled deliveries. The evaluation team finds it difficult to accept that responsible and legitimate commercial companies would purposefully stand in the way of an important means of identifying vital intelligence on drugs routes and drugs trafficking. The relevant German Ministries should agree a common strategy for tackling this issue and negotiate and agree working guidelines with the trade.

c. One area where there are very clear and practical guidelines concerns the deployment of undercover Officers and the control and use of informants. The evaluation team considers that these guidelines are worthy of wider circulation to other Member States to facilitate and sponsor the spread of good practice.

6.2.5. Co-ordination and Co-operation at National Level

a. The evaluation team was impressed by the success of the Joint Drugs Investigation Teams (GER). Although not a new concept in Germany, they remain a model for other Countries who are considering or are developing the introduction of similar teams.

b. The visits to the Customs stations at Frankfurt/Oder and to Frankfurt International Airport , clearly identified the need for a better supply of intelligence to local Customs personnel from their counterparts at other stations and from the Customs Investigation Service. Some assistance is provided at Frankfurt International Airport via the Detection Investigation Support Team (DEUT). However, this was found to be an isolated occurrence and it was found that the Detection Investigation Support Team had received no formal training and did not have sufficient resources for the task. Furthermore, local Customs personnel have no direct access to intelligence computer databases to facilitate intelligence risk analysis procedures. Overall, it was clear to the evaluation team that improvements are necessary in the key areas of communication, training and the provision of computer technology. Some suggestions received in these areas are as follows:

- Communication: The need to create a structure for co-operation between local customs personnel and the Customs Investigation Service to ensure that intelligence needs are identified and met. Also, the need for a forum for the exchange of trends and intelligence between customs personnel at all national airports and seaports.
 - Training: The need for a national customs intelligence training strategy to be developed to ensure that customer needs are identified and met .
 - Computers: The need to review the deployment of intelligence computer data bases in the Customs service to ensure availability and easy access to personnel engaged on drug prevention duties and in particular at: Frankfurt/Oder and Frankfurt International Airport.
- c. Following the evaluation visit, the German authorities wrote to the evaluation team to draw attention to work that is already in hand to make improvements to the provision and use of intelligence. For instance, it was noted that preparations are currently being made to combine the intelligence work carried out by the customs investigation office with the risk analysis at present separately performed by the head customs office (monitoring group) at Frankfurt International Airport. It was also noted that preparations are being made for the entry into operation of the ATLAS information technology procedures and risk analysis which will serve to provide customs clearance and customs investigation officers with information from local risk analysis groups and risk analysis centre. Finally, whilst recognising the need for continued improvement, the German authorities said that all information held by the Customs Criminal Investigation Office, is already transmitted to all local customs investigation offices and to local customs units.

6.2.6. Co-ordination and Co-operation at International Level

- a. During the evaluation visit, the initiative to set up a computerised records system for customs purposes in the European Union was discussed . The team believed that the results from this project should be monitored with a view to assessing the potential for expanding the network to all law enforcement disciplines.

b. The team found that at practitioner level within the Customs service, there was much ignorance and confusion as to what practical help Europol can provide to assist their intelligence or operational efforts. This matter needs careful handling to raise awareness of the services that Europol can provide.

c. At Frankfurt/Oder, there is currently little or no co-operation between the German Customs authorities and the Polish authorities with regard to drug trafficking (see 6.1.23.). This lack of co-operation was attributed to the fact that the Polish Customs authorities have no competency with drug investigation matters. However, given the strategic importance of this border post in terms of drug flows, the evaluation team considers that priority should be given by the German authorities to negotiating and establishing an effective working partnership with the relevant Polish authorities to combat drug trafficking. Following the evaluation visit, the German authorities advised the team of experts that efforts are being made to improve co-operation between Germany and Poland with the Agreement on bilateral police co-operation in border areas, which is currently under negotiation. The customs authorities are included in this Agreement to the extent that they perform border control duties (particularly in the area of drugs).

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PART 7

7. GENERAL CONCLUSIONS AND RECOMMENDATIONS TO GERMANY, AND, WHERE APPROPRIATE TO OTHER MEMBER STATES OF THE EUROPEAN UNION:

7.1. The evaluation team found it appropriate to make a number of recommendations for the attention of the German authorities. This should not detract from the fact that Germany has an excellent record with regard to the combating of drugs trafficking and the suggestions made by the evaluation team are only intended to add value to what is already an effective and structured system.

7.2. The experts would like to summarise their suggestions in the form of the following recommendations:

a) To Germany:

- 1) should consider the formation of a central co-ordinating body for the co-ordination of law enforcement efforts in the fight against drug trafficking (see 6.2.1. a.).
- 2) should ensure that Customs and Police at regional level co-operate better in the formulation of joint strategies (see 6.2.1.b.).
- 3) should consider options for pushing ahead with the development and introduction of management planning systems (see 6.2.1.c).
- 4) should finalise at an early stage, policy concerning the delegation of minor Customs drug offences to local units (see 6.2.1.d).
- 5) should ensure that the Police and Judicial authorities formulate and agree practical working guidelines governing the control of Drug Consumption Rooms with regard to law and order issues (see 6.2.1.e).

- 6) should consider the formation of a central body to oversee training and technical awareness issues and casework co-ordination for the Prosecution and Judicial authorities (see 6.2.1.f).
- 7) should deliver improved, fuller Court awareness training for police Officers, to enable them to adapt to, and undertake, court procedures more effectively (see 6.2.1.g).
- 8) should open communication channels with airline companies to agree working guidelines on data protection issues (see 6.2.2. a).
- 9) should circulate to other Member States details of the 'Anadolu' initiative as a tool for combating drug trafficking and as a model for planning , developing and implementing intelligence based projects (see 6.2.2 b).
- 10) should review communication between the 16 Länder FIU's to ensure information is exchanged both effectively and efficiently (see 6.2.3. a).
- 11) should devise and deliver improved training for law enforcement Officials in respect of confiscation laws (see 6.2.3.b).
- 12) should open communication channels with 'Lufthansa' to agree working guidelines with regard to unaccompanied controlled deliveries (see 6.2.4.b).
- 13) should circulate for the consideration and information of other Member States, guidelines relating to the deployment of undercover Officers and the control and use of informants (see 6.2.4.c).
- 14) should build upon improvements already made to the provision and utilisation of intelligence within the Customs service and ensure early implementation of other planned measures (see 6.2.5.c).
- 15) should consider developing a forum for the exchange of trends and intelligence between Customs personnel at all national airports and seaports (see 6.2.5.b).

- 16) should devise and implement a national Customs intelligence training strategy (see 6.2.5. b).
- 17) should review the deployment of intelligence computer databases in the Customs service to ensure availability and easy access to personnel engaged on drug prevention duties (see 6.2.5. b).
- 18) should raise awareness amongst customs personnel of the scope for co-operation with Europol (see 6.2.6. b).
- 19) should finalise and implement the Agreement on bilateral police co-operation between Germany and Poland at an early stage (see 6.2.6. c).

b) To other Member States and the European Union

- 1) should review and evaluate the effectiveness of their policies relating to controlled deliveries (see 6.2.4.a).
- 2) should monitor the results from the initiative to set up a computerised records system for Customs purposes in the European Union with a view to assessing the potential for expanding the network to all law enforcement agencies (see 6.2.6.a).

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LIST OF PARTICIPANTS OF THE DIFFERENT MEETINGS:

Monday 10-23-00:

Herr Seitz, Deputy Head Section Police Matters, Ministry of Interior (BMI)

Herr Dr. Teichmann: Head of section P 3, OC, drugs, (BMI)

Herr Schelhorn, P3 (BMI)

Herr Treuner, Head Zollfahndungsamt (ZFA) Potsdam

Herr Hirsekorn, Herr Lohwieser, ZFA Potsdam

Herr Götz, Head of Grenzabfertigungsstelle Frankfurt/Oder

Herr Below, Referent Rauschgift Oberfinanzdirektion (OFD) Frankfurt/Oder.

Herr Seidel, Head of Bundesgrenzschutzinspektion Frankfurt /Oder

Tuesday 10-24-00

Herr Voss, Head of Landeskriminalamt (LKA) Berlin

Herr Engler, Head of LKA 22, drugs,

Herr Pietsch, Head of LKA 21, OC,

Herr Möhrer, Head of Gemeinsame Ermittlungsgruppe Rauschgift 3, LKA 22,

Wednesday 10-25-00

Herr Nessler, Head of HZA Frankfurt Flughafen

Herr Wohlfahrt, Head of surveillance team (Überwachungsgruppe)

Herr Fritz, OFD Koblenz

Herr Rieder, Head of ZFA Frankfurt/Main

Herr Balzer, Head of Gruppe 4

Herr Meyer, Deputy Head of Gruppe 4

Herr Fritz, OFD

Thursday 10-26-00

Herr Rieder, L/ZFA Frankfurt/Main

Herr Etzel, Head of Gruppe 6, ZFA Frankfurt/Main-Flughafen

Herr Liebig, L/D.E.U.T., ZFA Frankfurt/Main-Flughafen

Herr Kilberg, ZFA Frankfurt/Main-Flughafen

Herr Ratzel, Head of Abteilung OA, Bundeskriminalamt (BKA)

Herr Brisach, Head of section OA 43, Finanzermittlungen

Herr Mohr, Deputy Head of group OA 2, Head of OA 24

Herr Reuß, Head of Project Group Zentrale Führung von Vertrauenspersonen

Herr Schiffels, Head Of section OA 54, Verdeckte Ermittler

Frau Letzner, OA 21

Friday 10-27-00

Herr Gach, OA 22, Sachgebiet Anadolu

Herr Ratzel

Herr Brisach

Herr Mohr

Frau Letzner

Herr Buchholz, Head of section ZD 34, Koordinierungsstelle Europol

Herr Weißkopf, OA 51, Sachgebiet Analyse- und Auswertemethoden

Herr Dr. Thiel, Head of Zentralstelle OK (ZOK), Generalstaatsanwaltschaft Frankfurt/Main

Herr Dr. Körner, Head of Zentralstelle für Betäubungsmittelkriminalität (ZFB),

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