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From: Presidency
To: Permanent Representatives Committee/Council

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Subject: Draft Council conclusions on the administrative approach to prevent and fight serious and organised crime

In March 2016, the Presidency submitted draft Council Conclusions on the administrative approach to prevent and fight serious and organised crime. The conclusions *inter alia* encourage the Member States to prevent that persons involved in criminal activities use the legal administrative infrastructure for criminal purposes.

Following discussions in the Working Party on General Matters including Evaluations (GENVAL), the Standing Committee on Operational Cooperation on Internal Security (COSI) examined the draft conclusions at its meeting on 17 May 2016 and agreed to the text as set out in the Annex.

Subject to agreement by the Permanent Representatives Committee (COREPER), the Council (Justice and Home Affairs) is invited to adopt these conclusions at its meeting on 9/10 June 2016.

(draft)

Council conclusions on the administrative approach to prevent and fight serious and organised crime

THE COUNCIL OF THE EUROPEAN UNION,

RECOGNISING that Member States are affected by organised criminal groups that use the legal administrative infrastructure to further their illegal activities;

AWARE that widespread cross-border crime, in particular when it concerns serious and organised crime, impacts significantly on the daily life of EU citizens;

EMPHASISING that this calls for more effective prevention measures and the use of a multidisciplinary approach that includes administrative measures, in addition to criminal law measures, at national and European level, and in cross border situations between two or more Member States;

CONSCIOUS of the differences between Member States in the way administrative measures are applied at local, regional and national level to prevent and fight serious and organised crime;

REFERRING to the European Agenda on Security¹, which stresses the crucial role local authorities have to play in tackling organised crime, alongside the work of law enforcement and judicial authorities. The Agenda states that a multi-disciplinary approach is required to effectively prevent and counter organised crime, which could be achieved by combining tools at administrative level to prevent infiltration in the licit economy and by sharing information between administrative and law enforcement authorities, taking into account limitations stemming from national law;

¹ COM (2015) 185, p.18.

REFERRING to the Council conclusions on setting the EU's priorities for the fight against serious and organised crime between 2014 and 2017 which stress the need for national competent authorities, including administrative authorities, to cooperate very closely in implementing those priorities²;

TAKING INTO ACCOUNT the Council Conclusions of December 2014 on combating organised crime infiltration in the legal economy through financial flow traceability and monitoring, in particular regarding public procurement³, as well the discussions in the Council bodies in the second semester of 2014 on the exchange, between Member States, of police information for administrative use⁴;

REFERRING to the recent initiatives to further reinforce EU and cross-border cooperation between Member States to tackle cross-border crime relating to outlaw motorcycle gangs (OMCGs), making use of judicial as well as appropriate administrative measures⁵;

TAKING NOTE OF the objectives set by the **Standing Committee on Operational Cooperation on Internal Security (COSI)** in the development of the administrative approach to prevent and fight crime in the multi-annual Work Programme 2015-2017 for the Informal Network of contact points on the administrative approach to prevent and disrupt organised crime⁶ ('the Informal Network');

TAKING INTO ACCOUNT the request from the Council to the Informal Network, as part of the Council conclusions of December 2010⁷, to assess possibilities for strengthening the exchange of information between administrative and law enforcement authorities in Member States, to promote the concept of administrative measures and to propose new initiatives in developing administrative measures;

² 9849/13.

³ 13311/5/14 REV 5.

⁴ 15617/14.

⁵ 12041/15.

⁶ 16407/14.

⁷ 15875/10.

TAKING INTO ACCOUNT the conclusions and recommendations of the ISEC-funded study on 'Administrative measures to prevent and tackle crime'⁸, on the legal possibilities and practical application of the administrative approach in Member States as well as the potential for information exchange between their authorities in support of an administrative approach to prevent and fight organised crime;

TAKING NOTE OF the output, lessons learned, difficulties and recommendations of the ISEC-funded project 'Administrative approach to organised crime: support European local authorities in combating local outcomes of organised crime', developed by the Belgian city of Genk in 2013-2015, and referring to the manual and toolbox on the administrative approach to organised crime addressed to local authorities in the European Union;

TAKING INTO ACCOUNT the conclusions and recommendations of the study on 'Administrative approach – towards a general framework'⁹, focusing on the concept of an administrative approach and on good practices in Member States in support of an administrative approach to prevent and fight organised crime;

TAKING NOTE OF a range of initiatives already taken to promote and share the value of an administrative approach, including the delivery of two EU handbooks on complementary approaches to crime and the development of the Europol Platform for Experts (EPE) on the basis of the administrative approach;

STRESSING the need to further improve and formalise EU cooperation between administrative authorities with the aim of preventing and fighting organised crime, in addition to the already existing law enforcement and judicial cooperation between Member States;

⁸ SPAPENS A.C.M., PETERS, M. & VAN DAELE, D., “Administrative Measures to Prevent and Tackle Crime – Legal possibilities and practical applications in 10 EU Member States”, Eleven International Publishing, 2015.

⁹ European Crime Prevention Network, Toolbox Series No. 5, in the framework of the project ‘Towards a European Centre of Expertise on Crime Prevention’ - EUCPN Secretariat, June 2014.

UNDERLINING the need to respect the rights, freedoms and principles as set out in the Charter of Fundamental Rights of the European Union as well as in the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR);

AWARE that Article 84 TFEU allows the European Parliament and the Council to establish measures to promote and support the actions of Member States in the field of crime prevention, excluding any harmonisation of the laws and regulations of the Member States,

CONCLUDES THAT IT IS NECESSARY TO DEVELOP AND FURTHER IMPROVE THE ADMINISTRATIVE APPROACH TO PREVENT AND FIGHT CRIME, IN PARTICULAR SERIOUS AND ORGANISED CRIME, AND TO THAT END

INVITES MEMBER STATES TO:

1. Make optimal use of and improve cooperation with the existing EU network for crime prevention (EUCPN) and the administrative approach.
2. Combine the following elements in the administrative approach, in full compliance with the Member States' administrative and legal framework:
 - a) Preventing persons involved in criminal activities from using the legal administrative infrastructure for criminal purposes, including, where relevant, procedures for obtaining permits, tenders and subsidies;
 - b) Applying all relevant types of administrative regulations to prevent and fight illegal activities, when possible under national law, including the preventive screening and monitoring of applicants (natural persons and legal entities) for permits, tenders and subsidies, as well as closing or expropriating premises when public nuisance occurs in or around those premises as a result of undermining criminal activities;
 - c) Coordinated interventions, using administrative tools to supplement actions under criminal law, to prevent, counter, disrupt and suppress serious and organised crime.
3. Continue to invest in promoting the development and use of administrative measures by local and other administrative authorities by both policy-makers and practitioners in Member States to prevent persons involved in criminal activities from misusing the legal infrastructure, such as licensing procedures or tender procedures.
4. Continue seeking to ensure effective cooperation between national law enforcement and administrative authorities, in particular to facilitate information exchange, and to adapt or refine, where necessary, the institutional and legal framework, so as to allow for such an exchange and to deal with relevant questions of privacy and data protection.

5. Favour the use of administrative instruments, in addition to the criminal justice-based approach, to prevent and fight serious and organised crime within the actions agreed in the Multi-Annual Strategic Plans (MASPs) and the annual Operational Action Plans (OAPs) for each priority in the EU policy cycle, in particular actions relating to trafficking in human beings, organised property crime, money laundering, smuggling of migrants, and crimes involving close network-based groups, such as mafia-style organised crime groups or crimes relating to OMCG's;
6. If relevant, encourage the representation of administrative authorities at both the local and regional level in the Informal Network on the administrative approach.

CALLS UPON THE MEMBER STATES AND THE EUROPEAN COMMISSION TO:

7. Establish, as of 1 October 2016, separate and independent secretariat support for the Informal Network, linked to the EUCPN secretariat, taking into account the tasks given to the network as laid down in the Council Conclusions on the Administrative Approach of 2010;
8. Carry out a follow-up to the ISEC-funded study on 'Administrative measures to prevent and tackle crime' and further develop cross-border projects, such as a Benelux pilot in the Euregion Meuse-Rhine, in order to better identify opportunities and obstacles for cross-border information exchange for administrative purposes in the fight against serious and organised crime, address the institutional framework allowing for such an exchange and deal with relevant questions of privacy and data protection.

CALLS UPON MEMBER STATES AND EUROPOL TO:

9. Continue to support the administrative approach to crime at EU level, through the Europol Platform for Experts (EPE) and by facilitating, where possible, the meetings of the 'core group' of Member States and EU Institutions¹⁰ of the Informal Network, and where relevant include administrative authorities during the implementation of certain actions as agreed in the OAPs of the EU policy cycle for organised and serious cross-border crime;
10. Stimulate, support and facilitate, as far as possible, activities concerning cross-border multi-agency cooperation with administrative and law enforcement authorities. Such initiatives should explore possible solutions to the legal and practical difficulties in the field, taking into account the available structure of information exchange supported by Europol;
11. Look into the possibilities of developing an institutional framework for an advanced multi-agency platform at EU level, including administrative authorities, which will exchange information for the purpose of cross-border cases as well as sharing best practices between Member States. Such a platform should as far as possible make use of existing structures.

CALLS UPON THE EUROPEAN COMMISSION TO:

12. Examine the possibility and advisability of revising and extending the current EU instruments, which are established for the purpose of information exchange on criminal matters in cross-border cases, for the purpose of an administrative approach to prevent and fight crime, notably taking account of the conclusions and recommendations of the ISEC-funded study;

¹⁰ The core group consists of Belgium, Hungary, Italy, Netherlands, Poland, UK and the rotating EU Presidency, the European Commission, Eurojust and Europol.

13. Commit the necessary resources to carrying out projects with a focus on the disruption of organised crime, as stipulated in the European Agenda on Security; and
14. Ensure that the necessary funds are made available to ensure that secretariat support can be provided to the Informal Network as of 1 October 2016. While it is appropriate to link the secretariat support to the Informal Network to the EUCPN secretariat, so as to make optimal use of the existing knowledge and expertise at the EUCPN secretariat, it must have a separate and independent character. It is not the intention, at this stage at least, to merge the Informal Network into the EUCPN.

INSTRUCTS COSI, within its mandate, to coordinate, support, monitor and evaluate the implementation and future development of the administrative approach, as set out in these conclusions.

INVITES THE PRESIDENCY to report to the Council, or to an appropriate Council preparatory body, on the progress of EU actions on the development of the administrative approach, as set out in these conclusions, at least every two years, starting in June 2017.