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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.



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THE EUROPEAN UNION**

**Brussels, 14 June 2002**

**14572/01 ADD 1**

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**ADDENDUM**

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Subject : Evaluation Report on Second Round of Mutual Evaluations "Law Enforcement  
and its Role in the Fight against Drug Trafficking"  
– Report on Belgium

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Annex E should read as follows:

DECLASSIFIED

**Statements received from the Belgian authorities regarding substantial changes in their  
Police and Judicial system**

The following explanations were received from the Belgian authorities after the evaluation visit. They are describing the substantial changes in the organisation of the Belgian Police and the Federal Public Prosecutor's Office that have taken place shortly after the evaluation visit and that have resulted in considerable changes regarding law enforcement and its role in fighting drug trafficking as described in this report.

**The Federal Prosecution Office:**

**1. Changes in the legislation**

The Octopus Agreement of 24 May 1998 and the Law of 22 December 1998 on the vertical integration of the Public Prosecutor's Office, the Federal Prosecution Office and the Council of Public Prosecutors <sup>1</sup> that followed from it define the thrust of a thorough reform of the Public Prosecutor's Office.

The law of 21 June 2001 "amending sundry provisions regarding the Federal Prosecution Office" <sup>2</sup> is an important first step in this reform of the Public Prosecutor's Office. The provisions of this law come into effect no later than 21 May 2002.

The purpose of the above two laws is, through the creation of a Federal Prosecution Office under the leadership of the federal public prosecutor, to respond to the shortcomings noted by the successive parliamentary commissions of inquiry regarding, on the one hand, the coordination of judicial intervention in criminal cases that go beyond the boundaries of one judicial district, beyond one sphere of competence or outside the country and, on the other hand, the processing of complex and specialised criminal cases.

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<sup>1</sup> Law of 22 December 1998 on the vertical integration of the Public Prosecutor's Office, the Federal Prosecution Office and the Council of Public Prosecutors, Moniteur Belge, 10 February 1999.

<sup>2</sup> Law of 21 June 2001 amending sundry provisions regarding the Federal Prosecution Office, Moniteur Belge, 20 July 2001.

## 2. Responsibilities of the Federal Prosecution Office

The law assigns four basic tasks <sup>1</sup>: to the Federal Public Prosecutor to prosecute for certain offences, to coordinate the conduct of public proceedings, to facilitate international cooperation and to monitor the general and specific operation of the federal police.

A certain number of specific tasks are also assigned to the Federal Public Prosecutor Office, *de lege ferenda* or on the basis of Ministerial guidelines or guidelines from the College of Principal Public Prosecutors.

### 2.1. Conducting public proceedings

2.1.1. The competence of the Federal Public Prosecutor himself to prosecute is based on a restrictive list of offences and, as a complement to that list, on two qualitative criteria (a security criterion and a geographical one) and covers all related offences.

Each basis of his competence is briefly examined below.

The restrictive list (first, fourth and fifth subparagraphs of Article 144b(1) of the Judicial Code) concerns the following offences:

- crimes and offences against State security <sup>2</sup>;

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<sup>1</sup> Article 144a(2), of the Judicial Code.

<sup>2</sup> Title One of Book II of the Penal Code. The offences concerned are assaulting and plotting against the King, the Royal family and the form of government, and acts that compromise the existence, composition and operation of the institutions (internal security) or independence of the country, the inviolability of the territory and international relations (external security).

- ❑ threat of attack or theft of nuclear equipment, theft or extortion of nuclear equipment and offences concerning the external protection of nuclear equipment;
- ❑ organised trading and trafficking of human beings <sup>1</sup> ;
- ❑ arms trafficking <sup>2</sup>;
- ❑ serious violations of humanitarian law <sup>3</sup>;
- ❑ illegal organisations and organised criminal groups.

In such cases the Federal Public Prosecutor has jurisdiction to prosecute.

The Federal Public Prosecutor can also, on the basis of the security criterion (Second paragraph of Article 144b(1), of the Judicial Code), prosecute in the context of offences committed with the use of violence against persons or material objects, for ideological or political reasons, with the aim of achieving objectives through terror, intimidation or threats.

The security criterion must be distinguished from specific offences against the security of the State, listed in the Penal Code. Certain criminal terrorist activities or crimes with a political aspect are not always covered by these descriptions but rather by descriptions of general law – for example ecoterrorism. That is why the legislature drew on the broad definition of "terrorism" used in Article 8(1)(b) of the basic law on the intelligence and security services of 30 November 1998.

Finally, in accordance with the geographical criterion (third subparagraph of Article 144b(1) of the Judicial Code), the Federal Public Prosecutor may prosecute in the context of offences which, to a significant extent, concern several fields of competence or have an international dimension, particularly those concerning organised crime.

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<sup>1</sup> Paragraphs 2 and 3 of Article 77a of the Law of 15 December 1980 on access to the territory, residence, establishment and expulsion of aliens, which implies that it must concern either ordinary activities or involvement in leadership or in a complementary activity of an association (whether or not the guilty party has a leadership position).

<sup>2</sup> Law of 5 August 1991 on the importing, exporting and transit of arms, ammunition and equipment designed specifically for military use and of the associated technology.

<sup>3</sup> Articles 1 and 2 of the Law of 16 June 1993 on the suppression of serious violations of humanitarian law.

It is also within the Federal Public Prosecutor's competence to prosecute for all offences linked to those appearing in the restrictive list or covered by the security criterion or the geographical criterion (6th subparagraph of Article 144b(1) of the Judicial Code).

2.1.2. The competence of the Federal Public Prosecutor himself to prosecute is subject to two further conditions, even if the offence appears in the list or is covered by the security criterion or the geographical criterion.

First, the Federal Public Prosecutor can conduct public proceedings only "if the proper administration of justice so requires".

The starting point is that the Federal Public Prosecutor's competence to prosecute is subsidiary to that of the Public Prosecutors of first instance. Only if there is an added value for the proper administration of justice may the Federal Prosecution Office prosecute <sup>1</sup>.

Second, the Federal Public Prosecutor may not prosecute in the cases specified by the Special Law of 25 June 1998 governing the criminal liability of Members of the Community or Regional Governments and by the Law of 25 June 1998 governing the criminal liability of Ministers. In these cases, the Public Prosecutor's competence is not affected even if the offences come within the range of subjects for which priority is reserved for the Federal Prosecution Office.

## 2.2. Coordination of public proceedings and facilitation of international cooperation

These tasks are the continuation of the current tasks of national magistrates.

## 2.3. Monitoring of the general and specific operation of the Federal Police

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<sup>1</sup> Bill on the Federal Prosecution Office. Parliamentary Paper 2000-2001, No 897/1, p. 6 and No 897/12, p. 58.

The Federal Public Prosecutor monitors the general and specific operation of the Federal Police in accordance with the Law of 7 December 1998 on the organisation of an integrated police service with a two-level structure.

A first federal magistrate is expressly responsible for monitoring the operation of the judicial police department of the Federal Police <sup>1</sup>. This magistrate ensures in particular that specialised judicial missions are carried out by that department in accordance with the instructions and guidelines of the judicial authorities.

A second federal magistrate is responsible specifically for monitoring the operation of the "anti-corruption service" in the judicial police department of the Federal Police <sup>2</sup>.

Lastly, a third federal magistrate chairs the information management monitoring body <sup>3</sup>. The monitoring body is responsible for processing information and data gathered by police in carrying out their judicial and administrative police tasks <sup>4</sup>. Its main task is to monitor compliance with the rules on access to data and information and transmission of data and information to the national general database <sup>5</sup>.

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<sup>1</sup> Article 219 (first paragraph of Art. 47c of the Criminal Investigation Code) of the Law of 7 December 1998.

<sup>2</sup> Article 219 (second paragraph of Art. 47c of the Criminal Investigation Code) of the Law of 7 December 1998.

<sup>3</sup> Article 191 (fifth subparagraph of Art. 44(7) of the Law on Policing) of the Law of 7 December 1998.

<sup>4</sup> Article 191 (first subparagraph of Art. 44(7) of the Law on Policing) of the Law of 7 December 1998 on the organisation of an integrated police service with a two-level structure, amended by Article 7 of the Law of 2 April 2001 amending the Law on Policing, the Law of 7 December 1998 on the organisation of an integrated police service with a two-level structure, and other laws on the setting up of new police structures (Moniteur Belge, 14 April 2001).

<sup>5</sup> Article 191 (second subparagraph of Art. 44(7) of the Law on Policing) of the Law of 7 December 1998.

### 3. Position of the Federal Prosecution Office in the Public Prosecutor's Office

The Federal Prosecution Office is solely and directly under the authority of the Minister for Justice. It is bound by the guidelines on criminal policy adopted by the Minister for Justice after the latter has heard the opinion of the College of Principal Public Prosecutors.

In this context, the evaluation by the College of Principal Public Prosecutors merits particular attention (third subparagraph of Article 143a(3) of the Judicial Code).

This evaluation takes place retrospectively, on an annual basis and in particular on the basis of the reports of the Federal Public Prosecutor and discussion with him. The evaluation is included in the annual report of the College of Principal Public Prosecutors submitted to the Minister for Justice, which is forwarded to the Parliament and published <sup>1</sup>.

### 4. Composition of the Federal Prosecution Office

The Federal Prosecution Office is made up of the Federal Public Prosecutor, 18 federal magistrates <sup>2</sup> and 47 administrative colleagues. The composition of the Federal Prosecution Office may also be expanded by delegation or by secondment of magistrates from local public prosecutors' offices.

The Federal Public Prosecutor is responsible for running the Federal Prosecution Office. The federal magistrates, delegated magistrates and seconded magistrates are under his direct command and authority.

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<sup>1</sup> Article 143a(7) of the Judicial Code.

<sup>2</sup> Article 144a(1) of the Judicial Code and Article 2 of the Law of 3 April 1953 on judicial organisation.



## **Brief summary of the reform of the police in Belgium:**

The law of 7 December 1998 radically reformed the police setup in Belgium.

There is now an integrated police force which is structured on two levels. On the one hand, there is the local level, consisting of a police district in which a single police force performs all basic policing duties. There are 196 police districts throughout the territory of Belgium. There is also the federal level, at which the federal police carries out specialised functions and provides support for the local police. These are two distinct policy levels which are not hierarchically related to one another, but between which there are significant and efficient liaison elements.

The federal police was set up on 1 January 2001, while the local police districts came into being as from 1 January 2002.

The police district consists of one or more local municipalities and has a unified local police force. This force is composed of the former local municipal police and the territorial gendarmerie squads. The local police is responsible for carrying out all local policing tasks, whether administrative or judicial, along the lines of the community policing model. In addition, the local police also has to assume certain federal policing tasks. On the other hand, it can also in certain circumstances obtain support from the federal police.

The federal police has come about as a result of integration of the criminal police and the gendarmerie, with the exception of the territorial gendarmerie squads. The federal police is responsible for the more specialised judicial and criminal investigations, maintaining law and order, traffic, personnel administration and logistical support. The federal police is headed by a Chief Commissioner, responsible for all the general directorates and departments of the federal police.

The general criminal directorate of the federal police consists of central directorates and departments, in addition to decentralised district criminal departments. One of the directorates within the general criminal directorate is the directorate for combating crime against individuals. The central department for combating drugs, the drugs programme, is dependent upon the latter directorate. There is a specialised drugs unit in each devolved district criminal department.

On the occasion of this police reform a National Security Plan was also drawn up for the first time in Belgium by the Ministers for Justice and for the Interior. The tackling of drugs trafficking and the drugs problem is one of the priorities of that plan. An extract from the National Security Plan, specifically relating to drugs, has been annexed hereto.

## **NATIONAL SECURITY PLAN**

### General framework.

#### **The general international context.**

Belgium has often been referred to on the international stage as one of the cradles, in Europe at least, of synthetic drugs and precursors.

Together with the ports in Spain and the Netherlands, the Belgian ports account for the largest imports of cocaine into Europe.

The Belgian ports and certain parts of Belgian territory are also significant transit points for drugs being exported to the United Kingdom.

#### **The European Union Strategy and Action Plan (2000-2004)**

The main targets of the EU anti-drugs strategy include:

- appreciable reduction of the availability of illicit drugs within a five-year period;
- appreciable reduction of the number of drugs-related crimes within a five-year period;
- appreciable reduction of money-laundering and illicit trafficking in precursors within a five-year period.

Of the aims that the European Union Action Plan endeavours to achieve, the following are

particularly noteworthy:

- Strategy aim 4: to give greater priority to drug use prevention and demand reduction, mainly by reducing new recruitment to drug use, and to the reduction of the adverse consequences of drug use (and particularly points 3.1.1.4, 3.1.2.2, 3.1.2.3 and 3.1.25 of the Action Plan);
- Strategy aim 5: to reinforce the fight against organised crime, illicit drug trafficking and related organised crime, and to step up police, customs and judicial cooperation between Member States (and particularly points 4.1.1.1, 4.1.1.3, 4.1.1.4, 4.1.1.6, 4.1.2, 4.1.2.5 and 4.1.2.6 of the Action Plan);
- Strategy aim 7: to make full use of the new possibilities offered by the Treaty of Amsterdam, particularly the articles on drug control, police cooperation and judicial cooperation as well as the common minimum standards in legislation (and particularly points 4.2.1, 4.2.2, 4.2.3 and 4.2.5 of the Action Plan).

### **Measures continuing in 2001**

For several years now, Belgium has been participating actively in international action against drugs tourism ("Hazeldonck" measures), in accordance with the EU Joint Action of 1997. At the request of the Minister for Secondary Education of the French-speaking community, the gendarmerie has been collaborating on devising a project for the prevention of drug-taking in secondary schools.

In June this year, the Belgian judiciary decided to collaborate with Europol's projects concerning South American criminal organisations actively involved in cocaine trafficking.

## **Dealing with the adverse effects of trafficking in or the use of illicit drugs – principle**

Local trafficking and the problems caused by it fall mainly under the responsibility of the local (administrative, judicial and police) authorities. These problems are of great concern to the local population (cf. the security charters), and it is therefore clear that they are very high on the agenda for both the administrative authorities and those responsible for the local police.

### **The priorities for 2001**

In view of the role to be played by Belgium in bringing about a common area of freedom and security in Europe, it will in the first instance be tackling the problems of synthetic drugs, cocaine and precursors. However, trafficking in heroin and cannabis will not be overlooked either.

#### General aim

Belgium will cooperate in achieving the European Union's objectives, and will, in particular:

- limit Belgium's involvement in drugs production and trafficking, with as a first priority production of and trafficking in synthetic drugs as well as imports of cocaine into Europe;
- at local level, tackling the supply of illicit drugs and the related problems.

### **TARGETS FOR THE FEDERAL POLICE FOR 2001**

#### **In the context of the fight against synthetic drugs production and trafficking**

For the central department:

- working out a method for detecting clandestine laboratories on our territory;
- working out a method for on-the-spot investigation in a clandestine laboratory in which synthetic drugs are produced;

- examining the practical arrangements for putting together a joint investigative team in cooperation with the neighbouring countries;
- active involvement in the specific projects developed within the European Union.

For the decentralised departments:

- active involvement in the specific projects developed within the European Union.

### **In the context of the fight against cocaine trafficking**

For the centralised department:

- examining the practical arrangements for putting together a joint investigative team in cooperation with the neighbouring countries;
- active involvement in the specific projects developed within the European Union.

For the decentralised departments:

- working out a practical project for cooperation between customs and the federal police, primarily at the external borders;
- active involvement in the specific projects developed within the European Union.

### **In the context of the fight against the misappropriation of precursors**

For the central department and decentralised departments:

- working out a practical project for cooperation between the central department of the federal criminal police and the precursors unit of the Ministry of Public Health;
- systematically proposing to the judicial authorities that an investigation be initiated whenever foreign departments report to us that precursors originating in Belgium have been seized.

## **In the context of the fight against heroin trafficking**

For the central department:

- identifying the criminal groups most active in Belgium in order to initiate investigations;
- active involvement in the specific projects developed within the European Union.

For the decentralised departments:

- active involvement in the specific projects developed within the European Union;
- initiating investigations into the most important criminal groups.

## **In the context of the fight against cannabis trafficking**

For the central department:

- keeping the contact magistrates informed of the genuine scope of cannabis trafficking from Morocco and of the minimum investigative action to be initiated in Belgium;
- carrying out a preliminary study before the possible start-up of a pro-active project;
- drawing up a manual describing the police approach towards cannabis-growing in Belgium.

## **For the problem as a whole**

For the central department:

- obtaining a picture of the specific threat posed by national and international drugs trafficking;
- active involvement in preparing for and chairing the Horizontal Working Party on Drugs during the Belgian Presidency of the EU;
- chairing the Working Party on Drug Trafficking during the Belgian Presidency of the EU.

## **TARGETS FOR THE LOCAL POLICE FOR 2001.**

### **In the context of the fight against the production of and trafficking in synthetic drugs**

- Assisting in the detection of clandestine laboratories, mainly by obtaining information;
- possible involvement in the European Union's projects by passing on the necessary information to the central unit within the federal police.

### **Support from the federal police for the local police in 2001.**

To assist the local police in the context of the fight against drugs sales and the drugs problem, the central department of the federal criminal police will:

- draw up and disseminate an inventory of best practices concerning the drugs problem and drugs sales at local level;
- draw up and disseminate an inventory of best practices regarding the preventive approach;
- exchange information on products and working methods, mainly for the devolved units of the federal police and the local police.