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"LAW ENFORCEMENT AND ITS ROLE  
IN THE FIGHT AGAINST DRUG TRAFFICKING"

REPORT ON BELGIUM

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THE EUROPEAN UNION

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**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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## P A R T I

### 1 INTRODUCTION

#### 1.1 General

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 was established.

Belgium was the fifth 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.

#### 1.2 Persons involved in the evaluation

The examiners for the evaluation were Mr. Gérard Browne (Colonel, Direction Générale de la Gendarmerie Nationale, France), Mr. Georges Heisbourg (Procureur d'Etat adjoint au Parquet de Luxembourg, Luxembourg) and Mr. Dott. Luciano Ruggeri (Dirigente Superiore di polizia, Direzione Centrale Antidroga, Italy). This team accompanied by two members of the General Secretariat and one member of the Commission visited Belgium for five days from 27 November 2000 to 1 December 2000.

#### 1.3 Programme

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

#### 1.4 Preparation of the report

Following these meetings, the evaluation team prepared this report, with the assistance of the Council 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) which the Belgian authorities had provided. The principle purpose of this report is to evaluate the application and

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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 cooperation in the fight against drug trafficking. The evaluation seeks in particular to assess cooperation and coordination between different law enforcement structures and operational practices in them. The main focus of the evaluation is the practical day to day cooperation between different units both at national and international level.

## 1.5 Structure of the report

The report first describes the organisational structures, intelligence systems, special investigation techniques and methods of coordination and cooperation utilised in Belgium 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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## P A R T I I <sup>1</sup>

### 2 GENERAL INFORMATION AND STRUCTURES

This chapter is aimed at describing the institutional and legal framework in Belgium that is employed in the fight against drugs crime.

At the time of the evaluation the police service in Belgium was divided into three parts: the *municipal police*, the *criminal police* attached to the Public Prosecutor's Office and the *gendarmerie*. Coordination between the three police services is organised at local and at national level.

It has to be noted however that as from 1<sup>st</sup> January 2001 a major restructuring of the police will take place that is bringing into effect the provisions of a law that has been passed in 1998<sup>2</sup>. Thus the police will be divided into two forces, organised and structured on a federal and a local levels.

#### 2.1 Competent Authorities – General Comments

2.1.1 Belgium has a central body responsible for coordinating police enquiries, the institution of *Magistrat National*. It was introduced in 1990 following the urgent need to coordinate and centralise investigations, enquiries and prosecutions relating to certain forms of serious crime.

The three areas in which the *Magistrats Nationaux* operate are organised crime in its various forms, large-scale banditry and terrorism.

In the area of international cooperation, apart from exercising their own powers, the three *Magistrat Nationaux* play a supporting role to their colleagues, the public prosecutors and examining magistrates, with regard to both active and passive letters of request.

They also have specific powers with regard to cross-border surveillance (in the Schengen context), controlled deliveries and undercover operations (pseudo-purchase and infiltration).

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<sup>1</sup> This part of the report is essentially based on the answers Belgium has provided to the Questionnaire.

<sup>2</sup> *Loi organisant un service de police intégré structuré à deux niveaux* of 7 December 1998.

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2.1.2 Within the *Service Général d'Appui Policier - SGAP*<sup>1</sup>, the International Judicial Cooperation Division acts as central contact point for all cross-border exchanges of police information. In this role it has to coordinate the use to which such information is put. This entails indexing and recording all the information exchanged so that it can be made available to the duly authorised law enforcement bodies.

The Division operates under the supervision of the National Magistrates' Office and the *Commission permanente de la protection de la vie privée* (Standing Committee on the Protection of Privacy).

2.1.3 In the gendarmerie, the *Bureau Central des Recherches – Programme Drogues (BCR)* not only coordinates surveillance operations by gendarmerie units but also coordinates the general anti-drugs effort. The department also has responsibility for supporting and monitoring the activities of the operational units, and is in charge of developing anti-drugs action plans for the gendarmerie units.

The department has a staff of 23, 17 of whom are primarily involved in coordinating the law enforcement effort.

2.1.4 At local level, local information offices – the *Bureaux d'Information d'Arrondissement (BIA)* – have been set up to coordinate the exchange of information for the different police services, particularly on drugs. These local offices are fed with enquiry data sheets, factual data from official statements and non-specific information of interest in police investigations. The staff of the BIA is in principle drawn from the three police services. Furthermore a precursor unit that is also staffed by customs officers from the DNR exists within the ministry of health.

2.1.5 Within the customs service the *Direction Nationale des Recherches (DNR)* acts as the national and international coordinating unit. It facilitates information exchange, coordination of operations and is representing the Belgian customs authorities in international for a. Since mid-1999 the *DNR* has established a Europol unit that has seconded liaison officers to Europol and *SGAP* thus providing an information exchange between the gendarmerie and customs.

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<sup>1</sup> The SGAP was set up in accordance with the Royal Decree of 11 July 1994 (amended on 11 June 1998).



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## 2.2 Legal bases and regulating provisions

2.2.1 In Belgium the guidelines and directives in the area of combating drug trafficking are acts adopted under the law enforcement policy. The legal bases of any law enforcement policy act are as follows:

- Article 151(1) of the Constitution which assigns to the relevant minister, in this case the Minister for Justice, the power to adopt binding law enforcement policy directives, including directives on investigation and prosecution policy.
- Article 143a of the Judicial Code setting up, under the authority of the Minister for Justice, the *Collège des Procureurs Généraux* responsible for implementing law enforcement policy as determined in directives adopted by the Minister for Justice in accordance with Article 143b of that Code.
- Article 143b further states that the Minister for Justice, after asking the *Collège* for its opinion, adopts the law enforcement policy directives, including directives on investigation and prosecution policy, and that such directives are binding on all members of the Public Prosecutor's Office; the Principal Public Prosecutors ensure that they are implemented.

2.2.2 The *Law of 24 February 1921*<sup>1</sup>, as amended by the laws of 9 July 1975, 14 July 1994 and 17 November 1998, penalises the principal criminal offences related to drugs crime.

2.2.3 It contains a number of aggravating circumstances that transform misdemeanours into criminal offences. The severity of the punishment varies in such cases according to the age of the "victim", according to the consequences of the offence or according to the degree of involvement in drug trafficking.

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<sup>1</sup> Loi concernant le trafic des substances vénéneuses, soporifiques, stupéfiantes, désinfectantes ou antiseptiques.

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2.2.4 There also exists a wide range of supplementary penalties like bans and closures, and confiscation. In derogation from ordinary law, a judge may confiscate objects, which were used or were intended for use in committing an offence, even if the objects do not belong to the offender. In other circumstances, Articles 42 and 43 of the Penal Code remain applicable.

2.2.5 The law also contains provisions for mitigation of punishment that allow for a reduction of sentences depending on whether information is being divulged before or after proceedings have been commenced.

2.2.6 For habitual offenders the law foresees augmented sentences should an offence be repeated within five years; a minor sentence may be doubled and a criminal sentence increased in accordance and sentences passed abroad for such offences will be taken into consideration when deciding whether a repeated offence has been committed.

2.2.7 A *Joint directive* concerning the prosecution policy for possession and selling of illicit drugs for profit from the Minister for Justice and the Principal Public Prosecutors issued on 8 May 1998 laid down a prosecuting policy for possession and selling of illicit drugs for profit.

Between a purely repressive approach and a policy of tolerance, Belgium is pursuing a "third way" based on prevention, help and deterrence its key objective being to discourage and reduce drug consumption and cut the number of new drug users. Second objective is the protection of society that is confronted with the phenomenon of drug use and its consequences. Measures under this objective also include helping drug addicts to lead as normal a life as possible despite their addiction. Criminalising, and specifically imprisonment, are considered the ultimate cure in cases where the use of certain substances is causing problems. This *Joint directive* is currently being reviewed, amended and revised.

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## 2.3 Prosecution Services and Judges

2.3.1 The *Joint directive* mentioned above has its implications on the way the prosecution policy is executed. As stated, this directive concerns breaches of the law of 1921, as well as orders for the enforcement of that law, specifically the prosecution policy for possession of drugs and selling drugs for profit in order to feed a personal habit.

The *Joint directive*, however, covers only delinquent users. The law-enforcement policy on drug trafficking and criminal gangs involved in drug trafficking is not its specific subject. The directive takes the approach that selling drugs for profit must be treated differently from selling to finance a personal habit.

From the information that was supplied by the Belgian authorities it appeared that standardising prosecution procedures as the *Joint directive* advocates is a difficult matter as at local and regional level each office developed its own template to decide whether drugs have been sold for profit or not.

2.3.2 Most police districts have one or more magistrates who specialise in drugs problems.

However, the methods used in practice vary widely: only a few prosecutor's offices train magistrates to specialise in drugs within organised crime units. Where such units do exist, the entire effort in the area of drug user policy is aimed at identifying drug dealing, or detecting a link in the chain of organised drug trafficking. Other prosecutor's offices, on the other hand, adopt a policy which is more centred on the problems of drugs users.

2.3.3 One magistrate from the team of *Magistrats nationaux* is given particular responsibility for drug trafficking cases. There are more of such cases than any other.

As mentioned in 2.1.1 the *Magistrats nationaux* operate both at national level (coordination of enquiries) and at international level (cross-border surveillance, controlled deliveries, execution of international letters rogatory).

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In addition, each prosecutor's office in Belgium has one or more specialist magistrates working full-time or part-time on drugs cases according to the size of the office. On the other hand, there is no judge who specialises in cases of this type. These are passed to the magistrate's courts responsible for administering ordinary law.

The sphere of competence of such magistrates is not different from that of their colleagues.

Relations with other district prosecutors were described as good, due to the frequent general meetings of prosecutors (27 districts) they can attend in Brussels, called by the assistant magistrate at the *Collège des Procureurs Généraux*.

2.3.4 Operational coordination between prosecution services/judges specialising in the investigation and prosecution of drug trafficking is a matter for the *Magistrat National* who has responsibility for ensuring coordination and cooperation between districts.

Moreover, relations between judges and prosecuting magistrates call for no special comment. Collaboration with the examining magistrates in such cases was described as good.

2.3.5 Police investigations are at all times under the control of a magistrate. This general rule also applies to proactive police work. Thus any use of special investigative techniques in the course of an enquiry is subject to the written prior authorisation of the magistrate concerned.

## 2.4 Police Authorities

2.4.1 As previously described, Belgium had three police services at the time of the evaluation.

- The criminal police deal with criminal enquiries; in theory they have no preventive role.
- The municipal police both conduct investigations (at local level) and take preventive measures.
- The gendarmerie has jurisdiction over the entire territory and can act both in criminal cases and in matters of prevention.

2.4.2 Although in principle all three police services have the power to deal with drugs problems, in practice their tasks are allocated in such a way that the criminal police deal only exceptionally with drugs cases, with the municipal police being mostly restricted to investigations and measures concerning users or drug dealing at local level.

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2.4.3 The gendarmerie is divided on the one hand into units responsible for delivering policing to the whole population and in particular for the local aspects of the drugs problem and on the other hand into Surveillance and Investigation Squads (*BSRs*) which are amongst others responsible for the supra-local and international aspects of the drugs problem.

2.4.4 The *BCR – drugs programme* coordinates action by the former units and the *BSR*. Although not exclusively dealing with drugs matters, a number of surveillance squads in the gendarmerie help out the units and the *BSR*.

The gendarmerie has nearly 450 units and 25 *BSRs*. As they are not exclusively devoted to dealing with the drugs problem, it is not possible to determine the human and/or financial resources involved.

2.4.5 In the gendarmerie, the *BCR – Drugs Programme* is also responsible for coordination and cooperation with the various competent bodies in order to implement other aspects of the fight against drug abuse, such as cooperation with community bodies coordinating prevention of drug abuse (*VAD*<sup>1</sup>, *CCAD*<sup>2</sup>, *ASL*<sup>3</sup>, focal point *REITOX*<sup>4</sup> etc.), NGOs (such as *Infordrogues*, *Sleutel*, *De Spiegel* or *Drugsbeleid 2000*) or other authorities (such as the Ministry for Secondary Education of the French-speaking Community of Belgium).

There is also cooperation with certain private companies, such as express transport companies, discothèque and club managers, and professional bodies (e.g. pharmacists).

2.4.6 The gendarmerie has guidelines for policing translating the political priorities in fighting the drugs problem. This policing policy tries to strike a balance between the deterrent and the preventive approaches or identify ways in which they can relate to each other, encouraging collaboration between the different levels and units of the gendarmerie and if possible with services outside.

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<sup>1</sup> Vereniging voor Alcohol en andere Drugprobleemen.

<sup>2</sup> Comité de Concertation Action Drogue.

<sup>3</sup> Arbeitsgemeinschaft für Suchtvorbeugung und Lebensbewältigung.

<sup>4</sup> Réseau européen d'information sur les drogues et les toxicomanies.

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2.4.7 The current thrust of gendarmerie policy towards users is to act as a relay and provide objective information to specialist social workers in contact with young people; with buying and selling on a small scale, the main effort is focused on reducing nuisance and the feeling of insecurity, but when it comes to illicit drug manufacture and trafficking, priority is given to breaking up the criminal gangs.

## 2.5 Customs Authorities

2.5.1 All officials of the Customs and Excise Authority are authorised to carry out controls anywhere in Belgium of any means of transport carrying or presumed to be carrying goods and to make sure that there is no question of imports, exports, transit or carriage in contravention of the law. This right also applies to the control of persons. All public-administration officials may cooperate in any resulting controls, penalties or seizures.

2.5.2 In the particular case of the illegal import, export, transit and carriage of narcotic drugs and psychotropic substances, the agents who first detect them are to notify their local superior and the customs and excise investigation services of what they have found and the latter will in turn consult the *Direction Nationale des Recherches (DNR)*. It is customary for operational contacts with a *Magistrat National*, the police services and the judicial authorities concerning narcotic drugs and psychotropic substances to be conducted through the *DNR*, which directly supervises the work of the seven regional inspectorates for customs and excise investigations.

2.5.3 In application of Article 10 of the Convention of 7 September 1967 on the provision of Mutual Assistance by Customs Authorities (NAPLES I), information on suspect movement of goods or forms of carriage and suspect shipping may however be exchanged directly between Belgian regional inspectorates for customs and excise and their counterparts in the Member States of the European Community.



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2.5.4 The *DNR* has a staff of 32 while there are 222 persons working for the investigation inspectorates which have to report to it and are empowered to deal with drug matters. Such staff are not responsible solely for investigating cases of fraudulent import, export and transit of narcotic drugs and psychotropic substances. The number of people assigned to this task depends on the number of "calls" from local services, on communications from national services and/or colleagues abroad with whom they are collaborating or indeed on their own activities as elaborated in response to risk analysis. It is therefore extremely difficult in the case of the customs services to quantify the human and financial resources involved in prosecuting drug trafficking. Furthermore a specialised precursor unit is operating within the *DNR*, staffed by members of the Ministries of Health's *Inspection de la pharmacie* and the *DNR*.

2.5.5 Policies are implemented by general directives that are sent out to the customs services on how to deal with established breaches of the Act of 24 February 1921 and its implementing provisions (including the rules for certain psychotropic substances).

2.5.6 Furthermore, a distinction is made between the ordinary law aspect which is notified to the prosecutor's offices for their attention and customs or licensing misdemeanours which are dealt with by the customs authorities themselves.

## 2.6 Training

2.6.1 The basic training undergone by every gendarme broaches the problems of narcotic drugs (legislation, product identification, relay function, nuisance reduction, intervention in local dealing, etc.). Gendarmes who are assigned to the BSR then undergo specific training, which covers special police techniques (controlled delivery, cross-border surveillance, etc.), a grounding in product recognition and legal bases (law on narcotic drugs, precursors, doping, etc.), basic property investigation techniques and the like. This theoretical training lasts several weeks and BSR candidates also spend several months in a work-experience placement at a BSR.

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2.6.2 There are moreover supplementary judicial-training modules for those more especially concerned with the problems of narcotic drugs, particularly within the BSR. On this basis there have been continuous-training sessions dealing with the dismantling of illicit laboratories, precursors, information management, specific criminal groups (Turks, Colombians, etc.) and the diversion of medicinal products.

2.6.3 Newly recruited staff of the Customs and Excise Authority undergo six hours of basic training in drugs matters. Research inspectorate agents can follow specialised courses and seminars on the prosecution of drug trafficking and related subjects (e.g. precursors).

2.6.4 To qualify for analytical training in the Gendarmerie, any applicant who so requests must pass the "operational crime analyst" selection tests organised jointly by the recruitment service and the Crime Analysis Bureau. However, if it is decided following the selection tests that an applicant is not suited, this will prevent him from following such a training course for 2 years. The applicant must also undertake to follow a 15-week training course 2 weeks of which will be residential. This basic training includes 6 weeks of work-experience placement with the BCR and field units.

2.6.5 As well as such basic training, there are arrangements for advanced training. This is organised for certain analysts on the basis of their evaluation or for all. Training and information days are organised every 2 months under the aegis of the director of the Crime Analysis Bureau and the presence of analysts is required. Regular refresher courses are organised on all matters relating to crime analysis, particularly in the field of informatics, for all working analysts.

2.6.6 Within the customs there is presently no provision for advanced training in crime analysis. To date, only a few representatives of the Customs and Excise Administration (investigation and training services) have taken part in a special training seminar.

## 2.7 Monitoring

2.7.1 There are no special evaluation systems to assess the implementation of agreed decisions in the law enforcement area, appropriate use of resources or whether all mandatory procedures have been respected.



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2.7.2 The Belgian authorities informed that this function is safeguarded by the fact that the prosecutor's office remains the guardian of the legality of investigation procedures used by the police services, taking into account the criteria of legality, subsidiarity, proportionality and advisability.

2.7.3 Furthermore National magistrates monitor the use of funds allocated to undercover operations.

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## 3 INTELLIGENCE

### 3.1 General

3.1.1 A distinction needs to be made between "soft" and "hard" information. Soft information is exclusively for use by the police and cannot be used in judicial proceedings. Hard information, on the other hand, can be used in judicial proceedings and is stored in a data bank to which all police services have access. Customs officials can also be given access through their liaison officer at the *SGAP* and Europol.

3.1.2 Both soft and hard information may be used in strategic analysis (intelligence). The input into the data bank of hard information consists of the records and standard forms, which summarize that information. Every discovery concerning narcotic drugs is entered into a standard form, which is made available to all police services.

An informal document concerning seizures at the national airport is widely circulated at both national and international level.

3.1.3 Strategic reports produced by international bodies or other countries are used at *BCR*, in particular to assess whether the measures decided on by the gendarmerie in Belgium are still appropriate. Operational analyses by the gendarmerie may be used in specific judicial proceedings but also, more generally, in response to a particular *modus operandi*. The most recent example was analysis of imports of hashish along the route from Morocco.

3.1.4 Currently the following data banks are being used by the police:

- The data banks of hard police information (POLIS and PJP). These data banks are managed by the gendarmerie and the criminal police respectively and input via standard forms comes from the police services connected to the systems.
- The National Register, which comprises administrative data on persons and is managed by the Ministry of the Interior.

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- The DIV data bank, which contains information on vehicles registered in Belgium and is operated by the Ministry of Communications.
- The data bank containing information on telephone subscriptions to the former national operator (Belgacom).
- The data bank of soft police information with an input via reports and requests from the various national and foreign units and services, which is operated by the gendarmerie and to which only gendarmerie units have access.
- The Europol and Interpol data banks as well as the SIS via the SGAP.

3.1.5 The limits regarding the extent of international police collaboration for judicial purposes with foreign police authorities has been particularly specified in a recent circular from the *Collège des Procureurs Généraux*. Some information may be freely exchanged between police services while others can only be exchanged if there is prior agreement by the magistrates responsible for the dossiers. The absence of a definition of the term "for police use only" means that the various police services differ in their interpretations of it. Pursuant to the Directive of the Minister for Justice and the *Collège des Procureurs Généraux*, Belgian police services may exchange soft information with foreign law enforcement authorities.

3.1.6 As mentioned in 2.1.2, the International Judicial Cooperation Division of the *SGAP* as the central contact point for all cross-border exchanges of police information includes among its chief tasks coordination of the use of such information.

To that end, all information exchanged is indexed and recorded so that it can be made available to duly authorised law enforcement services. The Division has to report to the office of the *Magistrat National* and the *Commission permanente de la protection de la vie privée*.

3.1.7 The *Cellule de Traitement des Informations Financières – CTIF* is Belgium's financial intelligence unit (FIU). It is an administrative authority placed under the joint control of the Ministry of Justice and Ministry of Finance. Its powers for the processing of financial information relate to the combating of all aspects of money laundering and are not therefore limited to drug trafficking.

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3.1.8 Directly attached to the Minister of Justice is the *Service de la politique criminelle*. Its genuine objective is the collection of information that is related to criminal policy which is being processed into advice for the ministry, the *Collège des procureurs* on prevention policy and matters of co-ordination between the different areas. Only recently the service has begun to extend its activities into the sector of fighting drugs crime so that its role in a future strategy to combat drug trafficking cannot be assessed yet.

## 3.2 Financial Intelligence

3.2.1 The *Cellule de Traitement des Informations Financières – CTIF* is headed by a magistrate seconded from the prosecutor's office and is neither a judicial authority nor a police service but is intended to fulfil a judicial purpose by submitting to the competent prosecutor's office dossiers providing serious evidence of money laundering with a view to possible prosecution.

3.2.2 The *CTIF* centralises, processes and analyses information on the laundering of money obtained inter alia through drug trafficking and other forms of serious crime of which there is an exhaustive list in the Act of 11 January 1993<sup>1</sup>. It is responsible for receiving declarations concerning suspected money laundering made by financial bodies (credit institutions, foreign-exchange offices, investment companies, life insurance companies, etc.) and other professions which may be used for money laundering (casinos, estate agents, transporters of funds, notaries, process servers, accountants, tax consultants, company auditors). These bodies and professions are required by the Act of 11 January 1993 to communicate any suspicions to the *CTIF*. Moreover, the latter may ask them for information of any kind, which it deems useful in carrying out its task. However, notaries, process servers, accountants, tax consultants and auditors have the option of invoking professional secrecy as authorised by Article 458 of the Penal Code.

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<sup>1</sup> LOI relative à la prévention de l'utilisation du système financier aux fins du blanchiment de capitaux (annule et remplace le texte paru au M.B. du 28-01-1993, p. 1564) Publié le : 09-02-1993.

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3.2.3 In addition, the *CTIF* may also request information from the police services (municipal police, criminal police, gendarmerie) and the administrative services of the State (Special tax inspectorate, Tax authority for undertakings and revenue, Customs service, State security, Aliens office, etc.). The *CTIF* makes use of the services of liaison officers from the gendarmerie and the criminal police, who ensure the harmonious and efficient transmission of information from the police services to the *CTIF*. Much information is also transmitted by the tax authority. Since February 2000, the *CTIF* is also authorised to access the National Register of Natural Persons.

3.2.4 The supervisory, trusteeship and disciplinary authorities of bodies and professions required to make declarations must also inform the *CTIF* of any facts they have come across that are likely to constitute proof of money laundering.

3.2.5 Finally, the *CTIF* also exchanges information as part of mutual collaboration on a reciprocal basis with FIUs abroad. Since it started to operate, the *CTIF* has concluded 24 cooperation agreements.

3.2.6 The members and staff of the *CTIF* are subject to stringent professional secrecy. Apart from transmitting information under the terms laid down by law to the competent public prosecutor, the supervisory, trusteeship or disciplinary authorities, the bodies abroad that fulfil similar functions and the European Anti-fraud Office (*OLAF*), they are not at liberty to divulge any information gathered in the course of their duties, even in the cases referred to in Article 29 of the Code of Criminal Procedure, which lays down that any official who is apprised of a crime or an offence in the course of his duties is required to notify the public prosecutor immediately.

3.2.7 The *CTIF* consists of six members. They decide to communicate files to the public prosecutor responsible when they consider that there are serious indications of money laundering. They are financial experts who must have at least ten years' experience of judicial, administrative or scientific duties relating to the operations of persons and bodies covered by the law. Further staff consists of nine financial inspectors for drawing up investigation reports on the basis of which members of the *CTIF* take their decisions. The inspectors are holding university degrees in economics or law.

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3.2.8 Since the installation of the *CTIF* drugs delinquency has made up 54,1 % of the cases that have been unveiled.

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## 4 SPECIAL INVESTIGATION TECHNIQUES

### 4.1 Financial investigations by police, customs and prosecutors

4.1.1 In Belgium there is no criminal financial investigation that is distinct from information collection. A financial investigation will always form an integral part of information collection or preparatory enquiries. There is no specific legislation in Belgium on property investigation, so that the usual legal provisions of the Code of Criminal Procedure do apply. It is, however the government's intention to provide a legal basis for separate financial investigations in the future.

4.1.2 In the course of proceedings, the examining magistrate has all the powers, including that of seizure, enjoyed by the public prosecutor. The application of the general rules on confiscation in Belgium do not prevent, however a parallel financial investigation being conducted during information collection or preparatory enquiries. Such an investigation then simply forms part of that process. It can, for example, be used to evaluate the assets to be confiscated so that all preparations have been made by the time the suspect is found guilty.

4.1.3 In 1997 Belgium has ratified the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. The Convention has been implemented the same year on international cooperation in carrying out seizures and confiscations.

4.1.4 The possibility of launching an independent criminal financial investigation once the suspect has been found guilty is currently being studied in Belgium. However, no concrete steps have yet been taken.

4.1.5 The *CTIF* has the power to conduct financial investigations in the general sense of the term but not in the police sense. The *CTIF* has the right to receive originals or copies of any additional information it considers useful. It can therefore inspect on the spot any documents, which may help in its task and belong to financial bodies, real estate agents, transporters of funds and casinos. Moreover, the *CTIF* is authorised to call upon the assistance of outside experts of its choice.



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4.1.6 The CTIF has the power to oppose the execution of a financial operation for a period of 24 hours on the grounds of the importance or urgency of the matter.

4.1.7 There are serious indications of money laundering when financial and banking data (major movements of funds to an account, exchange of a variety of foreign currencies, etc.) can be linked to available police data or aspects such as profession (income out of proportion to the profession concerned), the profile of the individual (criminal network), relations with other persons (acquaintance with persons known to be involved in drug trafficking) or the geographical locations involved in operations (offshore centres). In this way, it has been possible to establish patterns of money laundering.

4.1.8 The chapter on combating organised crime contained in the Federal Security and Penitentiary Policy Plan of 31 May 2000 contains a draft 33 on the seizure of assets of criminal origin.

4.1.9 Within the *Police judiciaire* a special unit deals with economic and financial crime, the *Office Central de la Délinquance Economique et Financière Organisée (OCDEFO)*. The OCDEFO is the natural cooperation partner of the CTIF and both have established a good working relationship. The importance of its work is underlined by the fact that in 1999 cases in money laundering made up for 67, 5% of all the cases the unit was handling. Out of these, 34,1% were drug-related. According to the statements made by the OCDEFO the Belgian situation clearly showed that the non-financial sector did not comply to a sufficient extent with the legal provisions regarding the reporting of suspicious transactions.

4.1.10 Financial investigations like other judicial investigations by the gendarmerie are carried out by members of the BSRs. Some investigations are however carried out by the gendarmerie's territorial squads.

Within the BSRs, financial investigators either form part of the sections dealing with traditional crime (drugs, vice, hold-ups, etc.) or constitute an independent financial section dealing with money laundering and property investigations.



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Within the *BSRs* at least one investigator has been trained in financial investigation. In the case of the gendarmerie, some 320 members of staff have received such a one-week training.

Some investigators also undergo more advanced training in accounting that can lead to a graduate diploma (accelerated higher education).

4.1.11 In this context it should also be mentioned that as part of the BCR's programme on organised crime and assets, a team of 11 persons specialises in the financial approach to crime, providing all gendarmerie units with support in the investigation of financial matters in general.

4.1.12 As far as possible prosecutor's offices increasingly carry out their financial investigations on the basis of dossiers and at the same time as the basic dossier open another dossier on indications of money laundering in order to try and obtain the confiscation of goods and assess the possibility of also carrying out confiscation through equivalence.

There are not yet any precise figures, but registries will probably be able to provide specific data in the near future.

4.1.13 Requests for the communication of financial information submitted to the customs and excise authority by the law enforcement authorities are all answered without exception. These mainly concern the application of magistrates' certificates.

The General Customs and Excise Act<sup>1</sup> specifies that officials of the customs and excise authority are still within their remit when they communicate information to other administrative departments of the state, the authorities of the communities and regions of the Belgian state, the prosecutor's offices and the registries of courts, tribunals and the like and to public institutions or bodies.

Information is communicated to the aforementioned insofar as it is necessary to enable them to carry out the tasks imposed on them by law or regulation. Persons in departments to which tax information has been supplied are required, like the agents of the customs and excise authority, to observe secrecy and may not use the information obtained for purposes other than the implementation of legal provisions for which it was supplied.

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<sup>1</sup> Article 320 du ARRETE ROYAL portant coordination des dispositions générales relatives aux douanes et accises du 18 juillet 1977.

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4.1.14 Furthermore, importers, exporters and any persons involved directly or indirectly in the import or export of goods are required by law<sup>1</sup> to respond to any request by customs and excise agents by communicating, without removal, their sales books, invoices, copies of letters, cash registers, inventory books and any books, records, documents and correspondence relating to their commercial or professional activity which it is deemed necessary to produce.

4.1.15 In the case of credit institutions, bankers and stockbrokers, communication of the aforementioned items can be required only on the basis of a special authorisation from the Director-General of Customs and Excise. Moreover, the persons concerned are required to supply orally or in writing all information relating to goods. Customs and excise agents may copy or keep documents and correspondence which establish or help to establish that a customs or excise offence has been committed.

## 4.2 Special investigative techniques

4.2.1 Special investigative techniques have not so far been the subject of specific legislation. They are governed by confidential Ministry of Justice Circulars of 1990 and 1992. The ministry of justice is currently working on a draft bill that is taking particular account of the recommendations made by the parliamentary committee of enquiry into organised crime in Belgium.

4.2.2 Belgium is taking part in a large number of cross-border operations to combat drug trafficking that require coordination facilitation at an international level. According to the Belgian statistics 120 controlled deliveries were carried out in 1999. As reported by the Belgian authorities these operations took place without any major incident.

4.2.3 The Belgian authorities noted, however, two sources of problems: One neighbouring country has particularly restrictive legislation on controlled deliveries. That legislation *inter alia* prohibits policemen from another country from participating as undercover agents in a controlled delivery in transit through national territory.

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<sup>1</sup> Article 203 du ARRETE ROYAL portant coordination des dispositions générales relatives aux douanes et accises du 18 julliet 1977.

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4.2.4 A further problem which has arisen more than once with another of Belgium's neighbours is the failure to send international letters rogatory before the operation. In such cases, Belgium is given very late notice of the operation and presented with a *fait accompli*.

Belgian authorities also reported that controlled deliveries were described by other countries as simple cross-border surveillance to allow the use of the more flexible procedure in Article 40(2) of the Schengen Convention.

4.2.5 In Belgium a request to carry out a controlled delivery is made by the prosecutor's office with responsibility for the area concerned. It is in principle the national magistrates' office, which is responsible for sending such international letters rogatory to other countries.

In the case of requests for controlled deliveries sent to Belgium, it is the *Magistrat national* who has general responsibility; he takes a decision in consultation with the relevant local prosecutor's office if the place of destination of the drugs in Belgium is known or he takes an independent decision if the place of destination in Belgium is unknown or if the transport is in transit through Belgian territory. Furthermore he checks the legality of the request (existence of international letters rogatory) and the operational capacity available.

Both, national magistrates and the prosecutor's offices conducting enquiries are available under a 24h/7 days basis.

4.2.6 Aspects relating to drug trafficking are generally entrusted to the gendarmerie's services.

While contact with another country is in principle via the *SGAP*, operational coordination within the police is organised directly by the *BCR – Drugs Programme* and national units from other countries. In a very few cases, coordination is through foreign liaison officers at Europol.

Letters rogatory are most usually sent to the permanent-duty staff of the International Judicial Cooperation Division of the *SGAP*. Such requests are also sometimes sent directly to the office of the *Magistrat national* or the gendarmerie's *BCR*.

After confirmation by the *Magistrat national*, such requests are sent for implementation to the gendarmerie's *BCR*, which ensures coordination with the surveillance teams and operational services from the other countries concerned. In certain cases, the help of agents of the customs investigation services may be called upon.

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4.2.7 Europol only very exceptionally takes part in this procedure. Direct contacts between the judicial authorities and the operational services of the countries concerned is generally deemed quicker and more effective.

4.2.8 The Ministerial Circulars of 1990 and 1992, which authorise controlled deliveries on certain conditions, do not restrict this technique solely to deliveries of narcotic drugs. The text of the Circular uses the more general term "illicit transport of goods", which means that this technique which may also be used in cases of trafficking in firearms and counterfeit money.

4.2.9 Belgium also participates in "cross-border" drug transactions or substitution operations if the drugs have been replaced in whole or in part by a legal substance. This procedure is used if there is a risk of losing control of the transport of narcotic drugs.

It is, however, excluded if replacement could jeopardise the police operation or if it creates a problem for subsequent judicial procedure in the country of destination of the drugs. In certain countries prosecution can only take place on the basis of the drugs actually seized in the country of intervention.

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## 5 COORDINATION AND COOPERATION

### 5.1 Cooperation at national level

5.1.1 In addition to the services already described, there is the office of the *Magistrat national*, which is also responsible for national coordination of law-enforcement authorities. As for contacts with other countries, the *SGAP* is the national contact point consisting of members of the three police services and a member of the customs services, although no formal protocol of cooperation exists between police and customs. Europol projects and analyses are discussed by the *SGAP* and the *BCR – Drugs Programme* and then submitted for authorisation to the office of the *Magistrat national*.

5.1.2 Given their powers to combat drug trafficking and in accordance with the international and national legal framework, the Belgian customs have seconded to the International Judicial Cooperation Division of the *SGAP*, in its role of Europol National Unit, two liaison officers, one representing his administration in the National Unit, the other carrying out the duties of Belgian liaison officer at Europol.

5.1.3 This collaboration in exchanging information through the Europol channel is based on a Protocol of Agreement, signed in 1999 between the Ministers for the Interior, Justice and Finance, which lays down the rules for cooperation. In the opinion of the Belgian authorities however, customs and police collaboration poses certain problems in view of the fact that, since customs officials do not have the status of criminal police officers in Belgium, customs liaison officers are not able to participate in the exchange of information unless the dossiers relate to offences involving the import, export and transit to or from third countries of goods subject to prohibition, restriction and/or control measures or the dossiers relate to goods under surveillance within the meaning of Articles 4–13°, 37 and 183 of the Community Customs Code. Moreover, given the national regulatory framework and the Europol Convention, police information can only be systematically forwarded to the customs authority if it has a direct bearing on the dossier in question.

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5.1.4 The International Police Cooperation Division of the *SGAP* therefore plays a coordinating role in the exchange of information under the control and with the approval of the *Magistrats nationaux*. But this is a case-by-case process and the systematic communication of information is excluded.

5.1.5 There are no specific procedures for operational matters involving both agencies and no multi-disciplinary teams have been set up as described in the Action Plan to Combat Organised Crime of 28 April 1997. Cooperation in operational matters is organised at local level by the services concerned. There are no mobile patrol squads or joint training programmes, but equipment can be shared on the basis of local agreements.

## 5.2 Cooperation at international level

5.2.1 Due to the impact of crime from Central and Eastern Europe, the Belgian Government decided to step up its collaboration with those countries and the initial exchange of letters that already started in 1997 has subsequently been or is in the process of being formalised in the form of bilateral police-cooperation agreements.

5.2.2 The existing bilateral agreements on police cooperation with countries outside the European Union are listed in Annex B.

5.2.3 Agreements on cross-border cooperation have been concluded bilaterally with adjacent Member States in order to implement and spell out the Schengen agreements and are listed in Annex C.

5.2.4 Apart from the formalised agreements on the customs sector there is in practice very close cooperation with the customs officials of other countries through joint monitoring operations, which are organised on a regular basis.

5.2.5 According to the Belgian approach, the choice for a specific channel requires a specific analysis on a case-by-case basis taking into account of the principles of subsidiarity and complementarity.



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As regards exchanges of information on serious and/or organised crime the figures available for 1999 reveal that Interpol was used in 49,9% of cases, liaison officers counted for 23,8% of the cases, Europol for 13,9% and Schengen for 12,4% (mainly cross-border operations).

The importance of the Interpol channel stems from the fact that this body is a global organisation and that in the opinion of the Belgian practitioners the Europol Convention imposes very strict rules, which does not seem to encourage the maximum use of this body.

5.2.6 *Magistrats nationaux* and public prosecutors' offices have no contact with Europol on an operational level. If there is contact, it is confined to the stage when information is transmitted, which, according to the information provided by the *Magistrat nationaux* is rarely used.

Technical assistance or advice from Europol has been very limited so far. There are signs of change as regards operational projects in the future. Furthermore, forwarding the results of proceedings to Europol is subject to the authorisation of the magistrates in charge of the dossiers. These results are not communicated to Europol as a matter of routine, but if the latter so requests, in specific instances the results could be made known with the prior authorisation of the relevant magistrate.

5.2.7 The Belgian FIU is authorised to exchange information in the context of mutual collaboration and on a reciprocal basis with bodies abroad performing similar functions and subject to secrecy obligations similar to those of the *CTIF*. They are based in principle on the Egmont Group model. Since it was launched, the *CTIF* has concluded 24 cooperation agreements with the relevant departments of the following States: Australia, Brazil, Bulgaria, Cyprus, Croatia, Spain, the United States, Finland, France, Greece, Hong Kong, Hungary, Italy, Lithuania, Latvia, Luxembourg, Norway, the Netherlands, Portugal, the Czech Republic, the United Kingdom, Slovenia, Sweden and Switzerland. The *CTIF* collaborates with the departments of other States in individual cases and on a reciprocal basis.

Disparity in the nature of the units processing financial information may have given rise to problems. Some units are of a police or judicial nature while others are of an administrative or even

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joint nature. There were instances where police units refused to exchange information with administrative units. However, the *CTIF* has concluded cooperation agreements with departments of this nature. At present the problem referred to above exists only with regard to one Member State of the European Union.

## 5.3 Drugs liaison officers

5.3.1 At present twelve countries have liaison officers (LOs) accredited to Belgium. Four further countries have also seconded LOs but so far they have not been accredited. They are listed in annex D. Under the terms of their accreditation LOs have no powers to carry out investigations themselves on Belgian territory which are the sole responsibility of the Belgian police. They ensure an efficient exchange of police information and have jurisdiction for a wide range of offences. Only the USA and the United Kingdom have seconded police officers, based in Belgium specially charged with the fight against drugs.

5.3.2 For 1999, according to the figures available in the International Police Cooperation Division of the *SGAP*, the exchange of information on drugs through foreign LOs represents 0,3% of the total number of police messages exchanged. However, there exists an undeclared figure, which it is impossible to estimate in view of the direct contacts these LOs maintain with the Belgian police as the majority of them are posted to The Hague.

5.3.3 Belgium has so far posted 19 LOs abroad. They represent all the Belgian agencies responsible for upholding the law (judicial authorities, police authorities and administrative authorities) and have jurisdiction for a wide range of offences. Their deployment is listed in annex D.

5.3.4 Operationally, these LOs come under the International Police Cooperation Division of the *SGAP*. Information must therefore be exchanged via this Division, which is responsible for verifying that the exchange complies with existing national and international rules. In an emergency, the law enforcement agencies may contact the LOs directly but the International Judicial Cooperation Division of the *SGAP* as central authority must systematically be informed so as to ensure control and the horizontal approach needed for perfect coordination as regards the transmission of information.



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5.3.5 When performing their judicial and/or police tasks, LOs remain under the operational control of the relevant Belgian magistrates (national magistrates, prosecutors' offices or examining magistrates).

5.3.6 For 1999, according to the figures available from the International Police Cooperation Division of the SGAP, the exchange of information on drugs through Belgian LOs represents 1,2% of the total number of police messages exchanged.

5.3.7 The intelligence gathered by LOs is routinely transmitted via the central authority (*CPI/SGAP*) to the Belgian judicial authorities either directly or via the police services. They are not authorised to use more than one channel for exchanging information and if coordination proves necessary it must be initiated (on request or on its own initiative) by the central authority (*CPI/SGAP*).

5.3.8 In accordance with their status, LOs are strategically responsible for a number of tasks that could not be fulfilled without being present in the area concerned. Cross-border operations through the liaison officer channel represent 9,2% of all operations for 1999. Cross-border operations on drugs account for 66% of all operations;

5.3.9 The LOs seconded to Europol are only very rarely involved in the implementation of special investigation techniques. Direct contact with the national authorities of the countries concerned is generally preferred.

On the basis of the fact that in 1999 controlled deliveries represented 30% of cross-border operations, the Europol liaison officer channel was used in 16 out of 368 (4,3%) cross-border operations.

Compared with the Schengen channel, the use of this channel is being described as still remaining very formalistic and above all very uncertain in that the procedures for transmitting advance information prior to submission of the court's request are too time-consuming and imprecise.

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## P A R T I I I

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

#### 6.1 General Comments

6.1.1 From the observations the evaluation team was able to make during the visit they were convinced that Belgium showed a strong commitment to fight drug trafficking and that this was done in an efficient and effective manner. The evaluation team was struck by the very positive and enthusiastic attitude of all practitioners from all the ministries and agencies visited. All persons that have been encountered evoked a strong sense of professionalism and commitment to their work.

6.1.2 Belgian governments have taken the necessary steps to cope with what has become an ever-increasing problem of the industrialised societies and one of the mainstays of organised crime. The efforts Belgium has made are especially noteworthy as the country not only has to take into account its federal structure but also the multilingual nature that coincides with a splitting of competences.

The aforementioned is mirrored not only by a number of projected or draft bills but also by the fact that the evaluation coincided with the dawn of a major reorganisation of the Belgian police services that became effective on 1<sup>st</sup> January 2001<sup>1</sup>. This major change however, also made it difficult to assess any future structures that may have superseded those described and evaluated in the report.

6.1.3 During the last years, Belgium has undertaken numerous initiatives in drafting new legislation aimed at fighting Organised Crime, drugs crime in particular, thus helping to enhance the means to achieve this objective and compensate deficiencies that have been detected. According to the Belgian authorities the main objective behind these efforts is to broaden the knowledge of Organised Crime, and one of the means Belgium has chosen to achieve this is by laying the stress on crime analysis.

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<sup>1</sup> Loi organisant un service de police intégré structuré à deux niveaux du 7 decembre 1998.

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6.1.4 Legislation projects are accompanied by scientific research that provides an excellent foundation. The findings of the *Étude épidémiologique* for instance revealed that prevention would best be provided on the federal level requiring the budget to be restructured, which is currently being worked on.

6.1.5 Belgium is following a multilateral approach towards drugs crime and considers criminalisation as a last resort only while deterrence, help and prevention are understood as integral parts of the Belgian drugs policy thus taking into account the different implications of drug addiction. Although, practically speaking, the Belgian handling of drug delinquency allows for an application of the opportunity principle in cases of mere consumption or negligible quantities, the Belgian law is severe, with high sentences of imprisonment in the most serious cases when this threshold is passed (cf. also 2.2.2).

6.1.6 However, when it comes to application of the law, the approach adopted by public prosecutors varies according to district and instance. Criteria used to determine whether a sale was made for profit purposes are mixed. Each office develops its own template using factors as varied as statements made, number of customers, comings and goings at the home of the person concerned, use of a mobile telephone, type of product, etc.

Under such circumstances, standardising prosecution procedures as the 1998 *Joint directive* advocates, appear to be difficult.

6.1.7 As regards the internal organisation of the prosecution service, most police districts have one or more magistrates who specialise in drugs problems. However, the methods used in practice vary widely: only a few prosecutor's offices train magistrates to specialise in drugs within organised crime units. Where such units do exist, the entire effort in the area of drug user policy is aimed at identifying drug dealing, or detecting a link in the chain of organised drug trafficking. Other prosecutor's offices, on the other hand, adopt a policy which is more centred on the problems of drugs users.

6.1.8 Although the evaluation team was instructed that seized assets were flowing into Belgium's coffers, no provision regulating the use of such funds could be identified.

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6.1.9 The evaluation team was convinced that all Ministries concerned were eagerly trying to enhance national cooperation, especially on a working level. This positive impression however, is not necessarily reflected in the institutional framework.

Although a memorandum has been signed between the relevant Ministries in 1999 which lays down the rules for cooperation in exchanging information between police and customs through the Europol channel the evaluation team had the impression that obstacles hampering a more effective cooperation on a broader basis do exist.

As Belgian customs officers do not have the functional status of a criminal police officer they are excluded from most police information unless they are actually involved in a specific case.

Difficulties in the daily work that were arising from this lack in status were brought to the attention of the evaluation team on several occasions while at the same time, the customs force were pleading for a closer cooperation with the police.

6.1.10 It was interesting to note, that informal cooperation of customs with magistrates and police was described as favourable in places where close cooperation is a daily requirement, such as Brussels National Airport and the Port of Antwerp. It cannot be assessed however, to what extent operational contact points between police and customs on a national scale would lead to an improvement of effectiveness in controls both at national and local level.

6.1.11 As already hinted it is accepted that cooperation and coordination as required exists on a case by case basis. On one hand this surely has to be attributed to the fact that there is a limited jurisdiction of customs authorities relating to drugs trafficking but as it was clearly uttered on several meetings by representatives from customs authorities it is also largely due to the fact that customs officers do not possess the status of a criminal police officer that is authorised to conduct investigations.

6.1.12 In general cooperation with EU partners appeared to be good, with cooperation in the police sector being better than in the judicial area. There are nevertheless obstacles that can mostly be attributed to different national legislations.

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Belgian practitioners reported some occasions on which minor flaws have been detected. From the *SGAP* it was learnt that in some cases of letters rogatory, the Netherlands did not answer the Belgian request. In the domain of controlled deliveries the procedural complexities encountered with the French partners had lead to difficulties. And in the field of financial intelligence the *CTIF* mentioned that a problem with Germany existed concerning the exchange of information which stems from the structural differences between the German and Belgian authorities.

6.1.13 Although Europol was employed for exchanging information between police and customs at a national level, information exchange with and use of Europol on behalf of the Belgian authorities concerned appeared to be of a lesser quantity. The reasons given by the practitioners related to the complex and restricted manner in which Europol handled the exchange of information. This also applied to the *Magistrat national*, who seldomly contacted Europol. Gendarmerie at Brussels National Airport however reported that they contacted Europol quite frequently in cases of cocaine smuggling related to South-America in the framework of the AWF.

6.1.14 The evaluation team was convinced of the high standard of cooperation between law enforcement agencies and players outside the law enforcement sphere. In this particular field the Belgian authorities are showing a remarkable spirit of cooperation and initiative that is mirrored in numerous contacts, activities and formalised agreements that have been concluded. As to cooperation with industry and commerce it also has to be noted that at major ports of entry into Belgium this cooperation is well maintained.

6.1.15 Although no training facility was visited, the evaluation team concluded from the information police and customs authorities had provided that differences in the scale of training related to drugs existed between customs and police, especially during basic training.

6.1.16 Both, customs and police have numerous ways and possibilities of acquiring information, storing and are using a multitude of databanks. Among some other Member States' police forces the Belgian police has been a forerunner in operational analysis and it seems as if those qualities are flourishing in the strategic sector as well.

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The annual drugs report that is being furnished by the *BCR – Programme des drogues* is a fine example of intelligence work that can be used at all levels to assess the drug situation and develop or adjust strategies.

6.1.17 Customs have access to data sources that are operated within the international context of customs sector and even from the private sector, but apparently that data is not exploited sufficiently at a national scale for analysis. Furthermore the absence of a systematic information exchange between customs and police deprives the two services of adding their information potential. Considering the fact that only a few customs officers have attended training courses in the field of analysis it seems as if room for enlarging that capability is left.

6.1.18 As to the *Service de la politique criminelle* within the Ministry of Justice, the role that it would take in the future cannot be assessed at this point, although its more general approach might serve well to identify and define areas of enhancement for fighting drug trafficking.

6.1.19 As the employment of the special investigative techniques to date purely relies on the confidential Ministry of Justice Circulars of 1990 and 1992 it is regarded as an improvement that an initial draft bill is being worked on. It is accompanied by a study conducted by the University of Gent. The evaluation team is convinced that this will lead to a more secure application for law enforcement officers and will also serve the purpose of European harmonisation.

6.1.20 New laws regulating the interception of the telecommunications have been introduced in 1994 and 1998 respectively. Although a framework for cooperation with telecommunication companies and service providers exists, it was uttered that compliance of the industry with existing regulations left room for some improvement. A central interception facility that is going to be installed is supposed to improve the capabilities of the law enforcement agencies. It cannot be denied however that the availability of offers like prepaid cards for cellular phones has created new possibilities for criminals to remain anonymous.



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6.1.21 Following a drugs policy that is trying to build on earlier experiences made by other countries Belgium is trying to avoid the flaws that different approaches have revealed.

Thus prevention is one of the pillars of Belgian drugs policy and is forming part of an integrated approach that does not rely on punishment alone. Besides cooperation programmes (e.g. with discotheques) targeted at younger non-addicts this commitment is reflected in providing strictly supervised substitution programmes. Furthermore the Belgian approach to combine prison sentences and controlled provision of drugs also has to be understood in preventing a relapse of addicts.

6.1.22 All questions asked by the experts during the evaluation were related to one degree or another to various international instruments relating to cooperation 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
- The Joint Action of 29 November 1996
- The Council Resolution of 29 November 1996
- The Joint Action of 17 December 1996
- The Joint Action of 9 June 1997
- The Joint Action of 16 June 1997
- The Joint Action of 3 December 1998
- The United Nations Conventions of 1961, 1971 and 1988

## 6.2 Possible Improvements

All of the suggestions made in this part are the results of the discussions undertaken with the representatives of the Ministries of Justice, Interior and Finance who were seen during the evaluation visit to Belgium. Moreover, the suggestions are also informed by the meetings held with

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practitioners from all disciplines. The evaluation team realises that these suggestions are based on experiences with other legal systems and traditions and that all of them might not fit into the Belgian systems. 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*

### \* *law*

At the time of the evaluation the Belgian government was considering a number of bills that were either under consideration, projected or at draft stage. The most important deal with Organised Crime, the reversal of the burden of proof for Organised Crime delicts and financial investigations. With view to a greater harmonisation of legislation within the EU, reference to existing instruments and experiences of other Member States should be considered where Belgium finds it appropriate to do so. The evaluation team is aware of the fact that this has to be done by taking into consideration local circumstances and requirements.

As the draft bill to supersede the Ministerial Circulars pertaining to the special investigation techniques was still being worked on, it would be particularly desirable to conclude the work on the bill as the absence of a law regulating special investigative techniques has reportedly lead to difficulties in the work of the law enforcement agencies.

### \* *Police*

The effects of the amalgamation of the three police services into two, one on the local and one on the federal level that will come into effect as from 1<sup>st</sup> January 2001 cannot be estimated yet. The evaluation team thus found it appropriate not to comment the new police organisation as the structure will have to prove its operationability before an evaluation can be made.



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## \* *Customs*

Although the working relationship between police and customs appeared to be adequate where close cooperation was required it was clearly mentioned by customs staff that there have been occasions when the lack of functional status of criminal police officer (i.e. the lacking capacity to conduct an investigation) had hampered either efficiency of the service or cooperation between police and customs. Having identified a certain need to look at this matter, the evaluation team would thus suggest to discuss whether granting that particular functional status to customs officers would be a benefit for greater efficiency of the entire system.

## \* *Seized assets*

As no provision regulating the allocation of seized assets could be identified, the evaluation team would suggest to consider installing an appropriate instrument (e.g. an interministerial funds, as it has been done for instance in Luxembourg). In this way assets could be used to finance projects to fight drugs and prevent their use.

## \* *Service de la politique criminelle*

The *Service de la politique criminelle*, which supports the Minister for Justice and the College of Principal Public Prosecutors in establishing the priorities for investigation and prosecution policy, will see its staff numbers significantly increased.

The Service will thus be able to provide additional support by drawing up guidelines and other policy documents on the broad issue of drugs. It is also necessary to emphasise the Service's key role in drafting the current joint directive, in evaluating its implementation and in drawing up the adjustments which will be made to it in the near future.

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## 6.2.2 *Training*

Specific training related to drugs crime appeared to be different within the spheres of the police, customs and the judiciary. As the police appeared to offer the widest possible range of drugs-related training the evaluation team thinks it would be valuable to consider joint training initiatives, especially at the more advanced stages of training. This could increase awareness and might also prove helpful to facilitate cooperation at all operational levels. To share resources and experiences the introduction of joint training between police and customs might be considered as the latter could benefit from the more comprehensive schedule of the police.

## 6.2.3 *Intelligence*

It was evident that two separate channels of information existed between the police and customs and although data can be exchanged (as for instance via the liaison officers at the *SGAP* and Europol) it would be for the benefit of a common intelligence approach to share data where it is possible to do so without infringing laws or constitutional principles.

This sharing of information could be supported by applying up to date analytical methods that could be trained on a broader scale in both services.

## 6.2.4 *Special Investigation Techniques – Financial Investigations*

As was learned from the information supplied by the *Office Central de la Délinquance Economique et Financière Organisée (OCDEFO)*, the indications clearly showed that the non-financial sector in Belgium did not comply with the legal provisions regarding the reporting of suspicious transactions. Although no particular reason was mentioned to explain this phenomenon, it might be attributed to the fact that the *OCDEFO* was already heavily burdened with its tasks and was lacking resources. It is thus being suggested to consider the allocation of staff resources.

Wire tapping, that of cellular phones in particular, has turned into a challenge for law enforcement as the liberalisation of the telecommunications market offers a multitude of possibilities. This also applies to Belgium and to facilitate the work of law enforcement in this field it would be desirable if the central interception facility that is foreseen would be installed fairly soon.

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Although this is an issue of a European dimension it should be considered how the complete anonymity of telephone subscribers (in the case of prepaid cards) could be balanced against law enforcement's interests. From a strategic point of view the ongoing liberalisation and fast development of the telecommunications market requires a close screening of the situation.

## 6.2.5 *Coordination and Cooperation*

### \* *national level*

Coordination and cooperation between police and customs give room for enhancement on the national level. While it appeared that each of the services was performing well in its own right a more institutionalised exchange of information could help to bridge some of the existing gaps. It should also be considered whether such information exchange could be facilitated by electronic means on the working level.

If the above mentioned structure has revealed some gaps, it is advisable to examine and suggest, within the framework of the European Institutions, concrete solutions for improving its effectiveness.

In Belgium, no multi-disciplinary teams have been set up as described in the Action Plan to combat Organised Crime of 28 April 1997. The evaluation team feels that work opportunities for multi-disciplinary teams ought to be identified and implemented even if only on a trial basis to make use of the forces' potentials. Their value could then be properly evaluated.

### \* *international level*

At an international level joint investigation teams, as postulated in the Tampere conclusions, might prove helpful to identify problems in cross-border operations. Results derived from such joint operations could also prove helpful to accelerate harmonisation within the EU.

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During the visit it was reported that there was a certain negligence to exchange information with Europol, a fact that was attributed to the complex and restricted manner in which Europol handled the exchange of information. Recommendation 19 of the 1997 Action Plan suggests to establish a national contact point for exchanging information between EU Member States and underlines the opportunity to use Europol National Units in order to obtain the necessary coordination at national (including Interpol and SIRENE) and international level.

If the above-mentioned structure has revealed some gaps, it is advisable to suggest, within the framework of the European Institutions, concrete solutions for improving its effectiveness instead of avoiding its use.

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## 7 RECOMMENDATIONS TO BELGIUM, AND, WHERE APPLICABLE TO OTHER MEMBER STATES OF THE EUROPEAN UNION

The evaluation team found it appropriate to make a number of suggestions for the attention of the Belgian authorities. This should not detract from the fact that Belgium has a justly deserved reputation for adopting an integrated policy with regard to drug trafficking that allows a flexible response by employing deterrence, prevention and help. It appeared to the evaluation team that cooperation in general terms works well between the different players and that all practitioners are highly motivated and dedicated to their tasks.

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

- should continue its current initiatives concerning legislation in the fight against Organised Crime, particularly those that are designed to enhance the daily work of law enforcement as the bill to regulate the employment of special investigative techniques (cf. 6.1.3, 6.1.19 and 6.2.1)
- should take into account that the final aim of the 1997 Action Plan is to reach a thorough harmonisation of the strategies against organised crime and that it is advisable to envisage the implementation of the national legislation in the different sectors of this sensitive field within the framework of the 2000 Palermo United Nations Convention on transnational organised crime
- should further explore a future possible strategic role of the *Service de la politique criminelle* in the fight against drugs (cf. 6.1.18 and 6.2.1)
- should consider the creation of an instrument (e.g. an interministerial funds) designed to administer seized assets from drugs crime that could be used to finance projects to fight drugs and prevent their use (cf. 6.1.8 and 6.2.1)
- should consider a greater extent of institutionalised information exchange between the Ministries that are concerned with fighting drug trafficking in order to facilitate a maximum use of resources (cf. 6.1.9, 6.1.17 and 6.2.5)

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- should consider whether a common intelligence approach of police and customs regarding the sharing of data would offer a benefit in fighting drug trafficking (cf. 6.1.3, 6.1.16, 6.1.17 and 6.2.3)
- should consider joint training programmes between the police and customs, especially at the more advanced level in order to facilitate a more common approach and the sharing of experiences from both services (cf. 6.1.15, 6.2.2)
- should continue the initiatives pertaining to the employment of crime analysis and extend training in analytical tools and methods, especially for the customs (cf. 6.1.3, 6.1.16, 6.1.17 and 6.2.2)
- should discuss the benefits for the law enforcement system that could derive from an equal status of customs officers vis-à-vis police officers as regards the power to conduct investigations (cf. 6.1.9, 6.1.11 and 6.2.1)
- should communicate to its collaborators abroad the implications of the reorganisation of the police regarding cooperation at an international level (cf. 6.1.2 and 6.2.1)
- should consider supplementary information concerning experiences in other EU-Member States when drafting new legislation with a view towards European harmonisation (cf. 6.1.3, 6.1.4 and 6.2.1)
- should circulate among EU Member States the results of scientific studies that are currently conducted in conjunction with legislative projects and forensic issues (cf. 6.1.4)
- should consider concrete solutions for improving the effectiveness of using Europol (cf. 6.1.13 and 6.2.5)
- should closely monitor the implications new developments in the telecommunications market have on wire tapping (cf. 6.1.20 and 6.2.4).

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ANNEX A

## VISITING PROGRAMME AND LIST OF PERSONS SEEN

### Visiting Programme

#### LUNDI 27 NOVEMBRE

*Arrivée des évaluateurs*

#### MARDI 28 NOVEMBRE

9h30: Ministère de la Justice, salle 228, boulevard de Waterloo 115, à 1000 Bruxelles

- Accueil des évaluateurs en présence de représentants de tous les services concernés et le cas échéant du Cabinet du Ministre de la Justice
- Présentation par le Département de la Justice des aspects législatifs et administratifs.

12h30: Déjeuner

14h – 17h: Ministère de la Justice, salle 228, boulevard de Waterloo 115, à Bruxelles

- Magistrat National
- Magistrat d'assistance du Collège des Procureurs généraux
- Certaines magistrats spécialisés de première instance

#### MERCREDI 29 NOVEMBRE

9h30: Avenue de la Toison d'Or, à 1060 Bruxelles

- Cellule de Traitements des informations financières (CTIF)
- Office central de la délinquance économique et financière



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11h : Rue des Quatre Bras 13, à Bruxelles

- Service général d'appui policier : division coopération policière interantionale

12h30 : Déjeuner à l'Etat Major de la Gendarmerie

14h : Bureau central des recherches de la Gendarmerie

- Programme drogues

16h30 : Aéroport de Zaventem

- Détachement de la Gendarmerie et contrôle du courrier express (DHL)
- Visite des services de la douane à Brucargo

JEUDI 30 NOVEMBRE

9h30 : Boulevard du Régent 36, à 1000 Bruxelles

- Direction nationale des recherches des douanes et accises

Déjeuner : à Anvers

Après-midi : – contrôle dans le port d'Anvers et ciblage du contrôle des conteneurs

VENDREDI 1<sup>ER</sup> DÉCEMBRE

10h : Ministère de la Justice, salle 228, boulevard de Waterloo 115, à 1000 Bruxelles

- Réunion de clôture en présence, si nécessaire, des représentants des services concernés

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## List of participants

Tuesday 28<sup>th</sup> November 2000, 9h30:

**MINISTÈRE DE LA JUSTICE, SALLE 228, BOULEVARD DE WATERLOO 115, À 1000 BRUXELLES**

M. DEBRULLE	Ministère de la Justice, Directeur général de la Législation pénale et des Droits de l'homme
Mme LEJEUNE	Avocat général, Magistrat d'assistance du Collège des Procureurs généraux
M. DE WINTER	Lieutenant-Colonel, Directeur du programme drogue de la Gendarmerie
M. DE SAGHER	Administration des Douanes et Accises
M. GAZAN	Conseiller général adj. Du Service de la Politique criminelle
M. GILLARD	Ministère de la Justice, Législation pénale, Chef du service de droit policier
M. VANHOUTTE	Ministère de la Justice, Direction générale de la Législation pénale
M. DE CRUYENAERE	Ministère de la Justice, Direction générale de la Législation pénale

Tuesday 28<sup>th</sup> November 2000, 14h:

**OFFICE DU MAGISTRAT NATIONAL, RUE DES QUATRE BRAS 13, À 1000 BRUXELLES**

M. BRAMMERTZ	Magistrat national
M.me LEJEUNE	Avocat général, Magistrat d'assistance du Collège des Procureurs généraux
M.me DE VROEDE	1 <sup>er</sup> Substitut du Procureur du Roi de Bruxelles, section jeunesse
M.me WILWERTH	1 <sup>er</sup> Substitut du Procureur du Roi de Liège
M. CAMBIER	1 <sup>er</sup> Substitut du Procureur du Roi de Tournai
M. APPART	1 <sup>er</sup> Substitut du Procureur du Roi de Namur

Wednesday 29<sup>th</sup> November 2000, 9h30:

**CTIF, AVENUE DE LA TOISON D'OR 55, À 1050 BRUXELLES**

M. VERHELST	Président de la Cellule de traitement des informations financières.
M. CRUCIFIX	Office central de la délinquance économique et financière

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Wednesday 29<sup>th</sup> November 2000, 11h:

**SGAP-CPI, RUE DES QUATRE BRAS 13, À 1000 BRUXELLES**

M. MEUNIER Service général d'appui policier, division coopération policière internationale  
Présence également de M. SCHRICKX, Chef de division ff CPI, de M.MERLO, SGAP-CPI et de M DE WINTER, Gendarmerie.

Wednesday 29<sup>th</sup> November 2000, 14h:

**ETAT MAJOR DE LA GENDARMERIE, BUREAU CENTRAL DES RECHERCHES, RUE FRITZ TOUSSAINT 47, À 1050 BRUXELLES**

M. DE WINTER Lieutenant-Colonel, Directeur du programme drogue de la Gendarmerie  
M. JOORIS douanes et Accises, Cellule précurseurs

Wednesday 29<sup>th</sup> November 16h30:

**AÉROPORT DE ZAVENTEM**

M. FRANCKX Lieutenant-Colonel, Commandant du détachement de la Gendarmerie à Zaventem  
M. VAN DEN BOSSCHE Directeur des opérations  
M. BOONEM Unité drogue, Gendarmerie Zaventem  
M. VANHOOREN Directeur de la Direction nationale des recherches des douanes  
M. DE SAEGHER Administration des douanes et Accises  
M. DAEMEN Responsable des Douanes à Zaventem

Thursday 30<sup>th</sup> November 2000 (morning):

**DIRECTION NATIONALE DES RECHERCHES DES DOUANES ET ACCISES (DNR):**

M. LUC DE SOMERE Directeur régional de la DNR  
M. ANDRÉ DE SAGHER Directeur à l'Administration centrale des douanes et accises  
M. ROGER VANHOOREN Directeur à la DNR  
M. LUC DEULIN Directeur à la DNR  
M. GUIBERT JOORIS Inspecteur à la DNR  
M. CLAUDE GILLARD Ministère de la Justice

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Thursday 30th November 2000 (afternoon)

## **DIRECTION RÉGIONALE DE L'ADMINISTRATION DES DOUANES ET ACCISES ET VISITE DU NAVIRE "ATLANTIC IRIS" (EN PROVENANCE DE CÔTE D'IVOIRE ET DECHARGEANT DES FRUITS)**

Mr. HERMAN DAMS	procureur du roi à Anvers
Mr. PAUL VAN SANTVLIET	juge au tribunal de 1ère instance à Anvers
Mr. BERNARD VAN CAMP	juge au tribunal de 1ère instance à Anvers
Mr. LUC DE SOMERE	Directeur régional de la DNR
Mr. ANDRÉ DE SAGHER	Directeur à l'Administration centrale des douanes et accises
Mr. WILLY BODEN	Directeur à la direction régionale des douanes et accises d'Anvers
Mr. JULIEN VAN LOOCK	Directeur des douanes et accises du port d'Anvers
Mr. PAUL PEETERS	chef de l'inspection des recherches des douanes et accises à Anvers
Mr. YVO HERMANS	Inspection des recherches D & A, à Anvers
Mr. DIRK DE LANGHE	Inspection des recherches D & A, à Anvers
Mr. DANNY VERDICKT	Inspection des recherches D & A, à Anvers
Mr. ANDRÉ DEJONGHE	Commandant de la Brigade du port d'Anvers (Gendarmerie)
Mr. JONNY GRONDELAERS	BCR (Gendarmerie – Bruxelles)
Mr. CLAUDE GILLARD	Ministère de la Justice

29<sup>th</sup> November 2000 (afternoon)

## **ZAVENTEM (INSTALLATIONS OF DHL – COURRIER – EXPRESS)**

Mr. WILFRIED COVENT	Aviation Security Manager – DHL
Mr. CLAUDE GILLARD	Ministère de la Justice
Mr. CHARLES DE WINTER	Directeur du programme Drogues, Gendarmerie – BCR
Mr. J. VAN DEN BOSSCHE	Directeur "Opérations" Veiligheidsdetachement Nationale Luchthaven, à Zaventem
Mr. ANDRÉ DE SAGHER	Directeur à l'Administration centrale des douanes et accises – Service Recouvrement et Contentieux – Direction Coopération
Mr. ROGER VANHOOREN	Directeur à la Direction nationale des recherches des douanes et accises (DNR)
Mr. GUIBERT JOORIS	Inspecteur à la DNR (drogues)

29<sup>th</sup> November 2000 (afternoon)

## **ZAVENTEM (BRUCARGO)**

Mr. FRANS DAEMEN	Directeur des douanes et accises, à Zaventem
Mr. ANDRÉ DE SAGHER	Directeur à l'Administration centrale des douanes et accises – Service Recouvrement et Contentieux – Direction Coopération
Mr. ROGER VANHOOREN	Directeur à la Direction nationale des recherches des douanes et accises (DNR)
Mr. GUIBERT JOORIS	Inspecteur à la DNR (drogues)
Mr. STEFAAN VYVEY	Vérificateur à la DNR (groupe d'observation –TSU)
Mr. HENRI CAMMAERTS	Vérificateur principal D & A à Zaventem (passagers)
Mr. PATRICK DE COSTER	Chef de l'Inspection des Recherches des douanes et accises à Bruxelles

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Mr. JOS KUSTERMANS

Inspecteur – chef de service du G.A.D. à Zaventem (dépendance de l'inspection des recherches à Bruxelles)

Mr. DANNY STRUYS

Vérificateur principal au G.A.D.

Mr. POL MEULENEIRE

Vérificateur principal au G.A.D.

Mr. CLAUDE GILLARD

Ministère de la Justice

Mr. CHARLES DE WINTER

Directeur du programme Drogues, Gendarmerie – BCR

Mr. J. VAN DEN BOSSCHE

Directeur "Opérations" Veiligheidsdetachment Nationale

Luchthaven, à Zaventem

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ANNEX B

## BILATERAL AGREEMENTS CONCLUDED BETWEEN BELGIUM AND OTHER STATES

- Agreement on police cooperation signed with Hungary on 4 November 1998;
- Agreement on police cooperation signed with Bulgaria on 24 June 1998;
- Agreement on police cooperation signed with Romania on 14 April 1999;
- Agreement on police cooperation signed with Morocco on 6 May 1999;
- Agreement on police cooperation initialled with Slovakia on 25 February 1999;
- Agreement on police cooperation initialled with Poland on 27 April 2000;
- Agreement on police cooperation being negotiated with Russia;
- Agreement on police cooperation being finalised with Slovenia.

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ANNEX C

## AGREEMENTS ON CROSS-BORDER POLICE COOPERATION WITH ADJACENT MEMBER STATES

### France

- Agreement of 19 June 1990 authorising customs officers to apply Articles 40 and 41 of the Schengen Convention.
- Framework Agreement of 16 March 1995 on cross-border police cooperation: Setting up of a consultation body.  
Increase in exchanges of information and concerted measures.  
Establishment of operational contact points in the border region.  
Improvement of means of communication.  
Joint training courses.
- A further implementing agreement is being finalised.

### Luxembourg

- Agreement of 19 June 1990 authorising customs officials to apply Articles 40 and 41 of the Schengen Convention.
- Benelux Agreement of 21 December 1993 on the fight against drugs (+ additional agreement between the police departments): exchanges of information and concerted measures against drugs tourism around the Maastricht-Liège-Luxembourg area.
- Senningen Agreement of 4 June 1996 on the coordination of police cooperation in border areas.
- Benelux Memorandum of Understanding of 4 June 1996 on cooperation in the police, justice and immigration sphere. (Setting up of a trilateral consultation body).



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## Germany

- Agreement of 19 June 1990 authorising customs officials to apply Articles 40 and 41 of the Schengen Convention.
- Agreement of 30 September 1959 on service relations between police authorities at the common border.
- Agreement of 27 March 2000 on the same subjects as in the other above mentioned agreements pursuant to Article 39(4) of the Schengen Convention.

## Netherlands

- Agreement of 11 August 1949 on direct contact between, on the one hand, the State Police and the Royal Military Constabulary and, on the other hand, the national Gendarmerie.
- Benelux Agreement of 21 December 1993 on the fight against drugs (+ additional agreement between police departments): exchanges of information and concerted measures against drugs tourism around the Maastricht-Liège-Luxembourg area.
- Agreement of 27 March 1995 on the setting up of a police consultation structure and on the extension of means of communication between border departments.
- Benelux Memorandum of Understanding of 4 June 1996 on cooperation in the police, justice and immigration sphere. (Setting up of a trilateral consultation bo

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ANNEX D

## LIAISON OFFICERS

- a) Foreign liaison officers accredited to Belgium
- Canada
  - Colombia (procedure under way)
  - France
  - Hungary
  - Ireland
  - Israel
  - Luxembourg
  - Netherlands
  - Norway
  - Spain
  - Sweden
  - United Kingdom
  - United States of America
- b) Foreign Liaison officers seconded but not accredited
- Australia
  - Japan
  - Malaysia
- c) Belgian Liaison officers abroad
- Austria (accredited for Austria, the Czech Republic, Slovakia, Hungary and Slovenia)
  - France
  - Germany
  - Italy (accredited for Italy, Malta, Albania and San Marino)
  - Morocco
  - Netherlands
  - Poland (accredited for Poland and Ukraine)

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- Romania
- Russia (accredited for Russia, Georgia and Moldova)
- Spain (accredited for Spain, Andorra and Portugal)
- Thailand
- Turkey (accredited for Bulgaria)
- Venezuela (accredited for Venezuela, Bolivia, Ecuador, Panama, Peru, Colombia, Suriname, Dominican Republic, Costa Rica, Netherlands Antilles and Aruba)
- USA

In addition, there are three LOs at EUROPOL The Hague (including one customs officer) and two LOs at Interpol Lyon.

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## 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.

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## 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).

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- ❑ 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.

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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.



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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.

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## 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.

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## 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.

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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

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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.

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## 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;

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- 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.



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## 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.

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## 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.

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