



Council of the
European Union

010153/EU XXVII.GP
Eingelangt am 04/02/20

Brussels, 4 February 2020
(OR. en)

5194/04
DCL 1

CRIMORG 4

DECLASSIFICATION

of document: 5194/04 RESTREINT UE/EU RESTRICTED

dated: 12 January 2004

new status: Public

Subject: EVALUATION REPORT ON THE THIRD ROUND OF MUTUAL
EVALUATIONS "EXCHANGE OF INFORMATION AND INTELLIGENCE
BETWEEN EUROPOL AND THE MEMBER STATES AND BETWEEN
THE MEMBER STATES RESPECTIVELY"
REPORT ON PORTUGAL

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REPORT ON PORTUGAL

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TABLE OF CONTENTS

1. INTRODUCTION	3
2. GENERAL INFORMATION AND STRUCTURES	4
3. INTERNAL ORGANISATION OF THE EXCHANGE OF INFORMATION	7
4. EXTERNAL EXCHANGE OF INFORMATION	13
5. EXCHANGE OF INFORMATION BETWEEN MEMBER STATES AND EUROPOL	14
6. EVALUATION MADE BY EXPERT TEAM	21
7. GENERAL CONCLUSIONS AND RECOMMENDATIONS OF THE EXPERT TEAM	34
ANNEXES	
ANNEX A: General comments from the Portuguese authorities	38
ANNEX B: Programme of visits	43
ANNEX C: List of persons met	44
ANNEX D: List of abbreviations	46

RESTREINT UE

1. INTRODUCTION

- 1.1. Following the adoption of the Joint Action of 5 December 1997, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime was established.
- 1.2. Following a proposal originating from the Swedish delegation and taken up by the Presidency to evaluate the supply of information and intelligence to Europol and the exchange of information and intelligence between Member States, the MDG adopted the proposal at its meeting on 3 and 4 June 2002.
- 1.3. At its meeting on 3 December 2002 the MDG approved the questionnaire on the third round of mutual evaluations on the topic "exchange of information and intelligence between Europol and the Member States and among the Member States respectively".
- 1.4. Following discussion at the MDG meeting on 9 January 2003, a list showing the order of Member States to be visited was agreed. Portugal is the second Member State to be evaluated during the third round of evaluations.
- 1.5. The questionnaires and the objectives of this evaluation are contained in document 11679/3/02 REV 3 CRIMORG 71.
- 1.6. The experts in charge of this evaluation were: Mr Manuel ALVAREZ-SOBREDO (Spain), Mr Romain NETTGEN (Luxembourg), Mr Colin WOODCOCK (United Kingdom). Two observers, Mr Mogens LUNDH (EUROPOL), Mr Luigi SORECA (Commission), were also present together with the General Secretariat of the Council.
- 1.7. The evaluation team has prepared the following report with the assistance of the Council Secretariat, on the basis of the observations and conclusions of the experts in the team together with the Portuguese's authorities' answers to the questionnaire.

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1.8. The report first deals with the general information and structure (2), followed by the internal organisation of the exchange of information (3) and of the external exchange of information (4) and then deals more specifically with Europol (5). In the last chapter, the experts make a global and technical evaluation and then propose some recommendations to enhance cooperation and effectiveness in the exchange of information within Portugal and with other Member States and Europol.

2. GENERAL INFORMATION AND STRUCTURES¹

2.1 LEGAL BASIS

2.2 The transfer of data to Europol is laid down and regulated in the provisions of Articles 6 to 10 of the Europol Convention, approved by the Assembly of the Republic's Resolution No 60/97, in conjunction with the President of the Republic's Decree No 67/97, both of 19 September 1997.

2.3 Article 8(4) states that national units shall communicate information "in compliance with their national law".

2.4 The processing of police data by the Criminal Investigation Department is duly regulated by Decree-Law No 352/99 of 3 September and pursuant to Article 13 "in the framework of its obligations vis-à-vis other European Union Member States and in the framework of Europol, Portugal may be asked to communicate personal data for the purposes of preventing and investigating crimes..."

2.5 The transfer of personal data to the European Union is also provided for in National Data Protection Commission Authorisation No 6/2000 of 1 February.

¹ This part of the report is based largely on the answers to the answers to the questionnaire.

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2.6 STRUCTURES

- 2.6.1. A decree-law and a law (Decree-Law No 275/A 2000 and Law No 21/200021 of 10 August 2000) authorise the Criminal Police (*PJ*) to coordinate all information on crime. Law No 21/2000 of 10 August 2000 on the organisation of criminal investigations lays down a series of principles and rules with the aim of stepping up cooperation between, and the effectiveness of, criminal police bodies with general competence - Criminal Investigation Department (Polícia Judiciária - Criminal Police), National Republican Guard (Guarda Nacional Republicana) and the Public Security Police (Polícia de Segurança Pública).
Among other things, this law attributes powers to those criminal police bodies in the framework of the criminal investigation system.
- 2.6.2. The Criminal Police come under the responsibility of the Ministry of Justice, which can be traced back to the historical fact that this department dealt with judicial cooperation.
- 2.6.3. Its tasks are to assist the judicial authorities with investigation and to develop and promote prevention and enforcement within its own sphere of competence or that conferred on it by the competent authorities.
- 2.6.4. The *Criminal Police* have specific powers and delegated tasks with regard to criminal investigations, which are:
- to investigate serious crimes, inter alia drug trafficking and organised crime or other crimes, by specific order of the Attorney-General.
 - to ensure liaison between branches and services of the Portuguese Criminal Police and other public services with international organisations in the area of police cooperation, in particular Interpol and Europol.
 - to guarantee at national level the resources to centralise, process, analyse and disseminate crime-related information, technical-scientific expertise and specific training for preventing and investigating crime.

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2.6.5. The Europol National Unit – ENU is the sole channel used for the exchange of information between Europol and the Member States (Article 4 of the Europol Convention).

2.6.6 For exchanges with other Member States, other channels may be used such as Interpol, via the National Interpol Bureau, the national section of the Schengen Information System (N.SIS) via the SIRENE National Bureau and the network of liaison officers.

Reference should also be made to other channels for information exchange such as the mechanisms for mutual administrative assistance under the Naples I Convention and Council Regulation No 515/97, as well as bilateral and multilateral conventions on mutual administrative assistance.

2.6.7 In Portugal, the law enforcement agencies with jurisdiction for the fields covered by the Europol mandate are as follows:

Civilian:

Criminal Investigation Department (Policia Judiciária - Criminal Police)

Public Security Police (Policia De Segurança Pública)

Aliens and Frontiers Department (Serviço De Estrangeiros E Fronteiras).

The General Directorate for Customs and Special Consumer Taxes (Direcção-Geral das Alfândegas e dos Impostos Especiais sobre o Consumo – DGAIEC) has a database within the Customs Anti-Fraud Integrated Criminal Intelligence System (Regulatory Decree No 22/95 of 23 August 1995).

Military:

National Republican Guard (Guarda Nacional Republicana) which comes under the Ministry of the Interior.

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The Criminal Investigation Department has an Integrated Crime Information System at national level to centralise, process and disseminate information – Article 8 of Decree-Law No 275-A/2000 of 9 November.

The obligation to cooperate and the way in which criminal investigation agencies are linked to the Integrated Crime Information System are covered in a specific provision, namely Article 8(3) of Law No 21/2000 of 10 August.

The existing communication channels are technically compatible, made up of permanent circuits and dedicated lines and protected against intruders by means of firewalls.

3. INTERNAL ORGANISATION OF THE EXCHANGE OF INFORMATION

3.1. STRUCTURES

3.1.1. The Criminal Police is a higher criminal police body which, as a division of Justice administration, hierarchically comes under the Justice Ministry and is supervised in accordance with Portuguese law. The Criminal Police have a vertical structure, headed by the National Directorate with its headquarters located in Lisbon. There are four subordinate Regional Directorates (*serviços regionais*) with headquarters in Lisbon, Oporto, Coimbra and Faro. Finally, there are eight Criminal Investigation Departments (*Departamentos de Investigação Criminal*) in mainland Portugal as well as on the Madeira and Azores archipelagos, with headquarters in the towns of Aveiro, Braga, Funchal, Guarda, Leiria, Ponta Delgada, Portimão and Setúbal.

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3.1.2. National Republican Guard

The National Republican Guard (GNR) has jurisdiction over more than 90% of the country, and its personnel - 25 980 soldiers - are divided into ten units: the General Command, four territorial brigades, two special brigades (Road Traffic Brigade (Brigada Trânsito) and the Excise Squad (Brigada Fiscal), two Reserve Units (the Cavalry and Infantry Regiments) and a Training Unit. The GNR is a military security force. Nowadays the GNR is the only militarised force, although in peacetime it is under the authority of the Ministry of the Interior.

With the extension – after 1 January 2002 – of the Europol mandate to all crimes included in the Annex to the Article 2 of the Europol Convention, some of those crimes will be investigated by the GNR. In addition, Portugal has just introduced (2001) a criminal investigation system which will take some time to implement. Furthermore, the authorities are working with the GNR on finalising a system that will enable them to consult the SIIC (integrated criminal intelligence system) files and to consult and retrieve information directly, under certain conditions and within certain limits. For all other information on criminal activities, however, the GNR must rely on the Criminal Police to communicate all collected data and to initiate investigations. The GNR is linked to the PSP and PJ in their respective fields of competence. The division of powers for criminal investigations is laid down in the Law on the organisation of criminal investigations (LOIC). It should be pointed out that the GNR also has an excise squad (Brigada fiscal) with the task of coastal surveillance and patrol, with specific powers, in conjunction with the PJ, to investigate customs crimes.

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3.1.3. The General Directorate for Customs and Special Consumer Taxes (*Direcção-Geral das Alfândegas e dos Impostos Especiais sobre o Consumo – DGAIEC*) is a department under the responsibility of the Ministry of Finance whose mission is to monitor the external Community border and the national customs territory for fiscal and economic purposes. Its specific powers include collection of special consumer taxes and other indirect taxes as well as checks on tax fraud in this area (Article 1 of Decree-Law No 360/99 of 16.09.1999 adopting the DGAIEC's framework law). For that last purpose under existing legislation, the customs authorities have to request the intervention of the police services and security forces for this purpose.

Customs information exchange is governed by the Naples Convention of 1967 and Council Regulation No 515/97, as well as by conventions and bilateral agreements.

The customs authorities are responsible for 8 international airports, 14 seaports and 24 recreational harbours over which they have to maintain surveillance 24 hours a day.

3.1.3.1. The Customs Directorate has an anti-fraud department that comprises four operational divisions and a central intelligence unit which is responsible for risk analysis. Customs offices with devolved powers exist at regional level and include the Information and Control Centres with powers for the prevention and repression of customs and tax fraud. The Customs Directorate is in direct contact with the Criminal Police, the excise squad and the Aliens and Frontiers Departments.

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- 3.1.3.2. To complete the summary of the tasks of the customs authorities, reference may be made to those relating to national security (dangerous products, illegal goods ¹) and borders. A framework law introduced in 2001 Law No 15/2001 of 5 June establishing the General Rules on Tax Offences (RGIT), empowered the DGAIEC to investigate customs offences without the authorisation of the Office of the Public Prosecutor (MP) which may, however, recommend an investigation at all times (Article 41(1)(a)). Under the Rules on Customs Tax Offences, previously in force and revoked by the aforementioned law, the DGAIEC already had individual investigative powers but only in the area of minor offences, and pursuant to Article 55, the competent body (MP) could delegate to it the authority to investigate customs offences.
- 3.1.4. The Aliens and Frontiers Department (SEF), which has one central directorate and 6 regional directorates, was established by a framework law of 1986, amended by a Decree-Law of 16 October 2000 (No 252/2000). It is a security service which comes under the Interior Ministry, has administrative autonomy and which, in the framework of the internal security policy, has as its primary objectives to control the movement of persons at borders and the residence of aliens on national territory and to study, promote, coordinate and implement the measures and action related to such activities and migratory movements. As a criminal investigation body, the SEF has a Central Directorate for Investigation and Information Analysis (DCIPAI) which is responsible for measures aimed at preventing, verifying and investigating activities linked to the crime of facilitating illegal immigration and related offences. The DCIPAI Analysis Unit carries out operational and strategic analyses based on information gathered on migratory movements. The SEF is also responsible for administering the database for issuing passports (BADEP) and EURODAC.
- 3.1.5. The Public Safety Police ² (PSP) have general nation-wide competence for crime prevention and law enforcement.

¹ Including counterfeit goods.

² Policia de Segurança Pública. (Public Security Police).

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- 3.1.5.1. The *PSP* has two metropolitan commands in Lisbon and Oporto as well as two regional commands in the Madeira and Azores archipelagos.
- 3.1.5.2. The *PSP* also has 16 police commands in mainland Portugal, namely in Aveiro, Beja, Braga, Bragança, Castelo Branco, Coimbra, Évora, Faro, Guarda, Leiria, Portalegre, Santarém, Setúbal, Viana do Castelo, Vila Real and Viseu. Both the two metropolitan commands and the other police commands come under the *PSP*'s National Directorate and are not in any way linked in terms of hierarchical subordination. Like the metropolitan commands and the police commands, the regional commands also come directly under the *PSP*'s National Directorate.
- 3.1.5.3. Three parallel commands are based in the Azores at Ponta Delgada, Horta and Angra do Heroísmo.
- 3.1.5.4. In terms of general policing, this 20 000 strong directorate has three major areas of competence: internal security, territorial defence and all emergency situations. In addition, it has sole responsibility for three specific areas: controls on firearms, airport security and the security of members of the Government. It covers about 5% of the entire country and 45% of its total population. Only 4 years ago, the *PSP* lost its military character (under the law of 27 January 1999) and now comes under the authority of the Ministry of the Interior in peacetime.
- 3.1.6. The prosecution services in Portugal are composed of a Central Investigation and Prosecution Department (*Departamento Central de Investigação e Acção Penal – DCIAP*) and four Investigation and Prosecution Departments (*Departamento de Investigação e Acção Penal – DIAP*), with headquarters in the country's four judicial districts. In other jurisdictions at local level (*Comarcas*), the public prosecutors are competent to investigate and prosecute criminal offences.

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3.1.6.1. The *DCIAP* is responsible at national level for coordinating investigations into certain serious crimes. It is also competent to investigate cases of money-laundering. During the evaluation, the team of experts was able to meet the DIAP in Lisbon that is responsible for all criminal prosecutions for the whole of the Lisbon area. This department deals with 89 000 complaints per year, about 25% of all the prosecutions for the whole of Portugal. As regards internal arrangements, it is important to note that a representative from the Public Prosecutor's Office were present at the SIRENE Bureau and that the DIAP, like all public prosecution departments, liaised with the police, in particular, with the PSP, the Criminal Police and the GNR.

3.2. CHOICE OF COMMUNICATION CHANNEL

3.2.1. The criteria chosen are based on compliance with the rules laid down in the Europol Convention, the Convention implementing the Schengen Agreement, and acts of the International Criminal Police Organisation – Interpol, i.e. the choice of channel depends on the subject matter and on the specific powers of each institution or organisation.

3.2.2. As the ENU's representative to Europol, the liaison officer plays a key role in the police cooperation structure, acting as a central point for the national authorities responsible for executing requests for police and judicial co-operation. Other important duties undertaken by the liaison officer include daily contact with Europol, actively participating in defining Europol's objectives and liaising with the other Member States via the National Liaison Offices. This is the channel through which all information flows and bilateral/multilateral information and data between the National Unit and Europol are exchanged. In principle, no distinction is made between bilateral or multilateral cases. In certain highly sensitive bilateral cases or for operational reasons, there may be greater recourse to the liaison officers of the respective Member States.

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4. EXTERNAL EXCHANGE OF INFORMATION

4.1. DATA EXCHANGE PROCESS

4.1.1. As regards the areas of responsibility mentioned, drug trafficking, along with vehicle trafficking, continues to predominate, and illegal immigration matters are clearly gaining ground.

No Member States are more important than others. However, the fact that certain crimes, for instance drug trafficking and illegal immigration, are more prevalent in certain Member States gives rise to greater information flows.

The Portuguese Constitution lays down that the concept of personal data and its automatic processing, attachment, transmission and use is to be legally defined in specific legislation.

Law No 67/98 of 26 October – the Personal Data Protection Act – transposed into Portuguese law Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Pursuant to Article 18 of the Data Protection Act "... personal data shall circulate freely between the Member States of the European Union...".

There are therefore no impediments to information exchange.

For the purposes of Article 23 of the Europol Convention, the National Data Protection Commission is the national supervisory body (Law No 68/98 of 26 October 1998).

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4.1.2. INFORMATION OWNERSHIP

The Portuguese authorities have never encountered impediments resulting from differences in law enforcement or judicial structures, for instance. Nor has legislation on data processing given rise to any difficulties regarding the concept of "information ownership".

The Portuguese authorities do not maintain joint units with other EU Member States (e.g. coordination centres etc.) that facilitate the exchange of information between Portugal and other countries.

5. EXCHANGE OF INFORMATION BETWEEN MEMBER STATES AND EUROPOL

5.1. DEFINITION OF INFORMATION AND INTELLIGENCE

5.1.1. There is no clear distinction in law between information and intelligence in term of data processing. The legal system contains no legal definition of the product of data-processing. This gap will be filled in the text to be drawn up pursuant to Article 8(3) of Law No 21/2000 of 10 August 2000.

Meanwhile, "personal data" and "processing of personal data" are defined in Law No 67/98 of 26 October 1998.

In the Integrated Criminal Information System there are four security-based levels of access to information, on a hierarchical scale from 1 to 4, where level 1 is the lowest access level and 4 is the highest.

On these terms, Europol is supplied with information classified at levels 1 to 3. At a certain point in an investigation, level 4 information may be downgraded and made available. Portugal must emphasise that the public authorities have never made use of the restrictions mentioned under Article 4 of the Europol Convention: those restrictions have never been invoked.

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Information may be forwarded during and at the end of investigations. This situation can vary according to the specific type and dynamic of each investigation.

The conditions to be met are those imposed by the Europol Convention as regards data transmission and must be forwarded to the ENU.

5.2. NATIONAL EUROPOL UNIT

5.2.1. Law No 21/2000 of 10 August 2000 on the organisation of criminal investigations specifically authorised the Criminal Investigation Department (Criminal Police) to "liaise between Portuguese criminal police agencies and authorities and other Portuguese public authorities on the one hand, and with the international criminal police organisations, namely Interpol and Europol, on the other." Article 37 of the framework law on the Criminal Investigation Department, Decree-Law No 275-a/2000 of 9 November 2000, taking account of the specific authority to liaise mentioned above, created the Central Department of International Cooperation, with responsibility *inter alia* for "ensuring that police cooperation mechanisms are operational in the framework of the ICPO (Interpol), Europol and other international bodies of the same kind", with a view to unifying the various aspects of intervention in terms of international cooperation, i.e. Portugal's commitments within the European Union and within the ICPO. Under article 37(3), the Europol National Unit operates as part of the central department for international cooperation.

5.2.2. The ENU is made up of one criminal investigation co-ordinator, who heads the unit, one chief inspector and three inspectors. The technical resources available to the ENU are provided by the Criminal Investigation Department and consist of workstations running with the Windows NT operating system and Microsoft Outlook for e-mail. The e-mail and telephone line used in communications with Europol are processed through a properly protected VPN.

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5.2.3. The plan to publicise the products and services that Europol is capable of providing to Member States through the ENU came into operation towards the end of 2000 and consists basically of the following:

- participation in debates and seminars;
- inclusion of a module on international cooperation in the various training courses of the Higher Institute for the Criminal Police and the Criminal Sciences;
- visits to the operational units of the Criminal Investigation Department;
- coordination meetings with experts responsible for the analysis files (Article 10 of the Europol Convention);
- producing and setting up information on the ENU and Europol on the intranet and on the Criminal Investigation Department page on the internet (www.pj.pt);
- publication of an article on Europol in a journal read by magistrates.
- technical services have now been asked to make two cd-roms produced by Europol available on the intranet, in order to make their contents widely accessible.

5.2.4. The ENU cooperates with Interpol's national bureau, since the latter is also integrated into the Central Department of International Cooperation. It is linked to the SIRENE National Bureau through the operating group of the Criminal Investigation Department that works there and is made up of officials of that department.

5.2.5. In Portugal, the SIRENE National Bureau comes under the Ministry of the Interior. Its legal status is set out in Decree-Law No 292/94 of 16 December 1994. However, for the purposes of Article 40 of the SCHENGEN Convention, which deals with cross-border surveillance, the central authority for transmission of requests for mutual assistance in criminal matters is the Criminal Investigation Department's Central Judicial Cooperation Department (DCCI)

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- 5.2.6. Under the Europol Convention, the ENU may, on its own initiative, provide data and information to Europol. However, since responsibility for criminal investigations is spread among the various criminal police agencies in Portugal, the ENU can contribute only in areas which are not the exclusive preserve of the Criminal Investigation Department, such as information for investigating crimes linked to facilitating illegal immigration, which is the domain of the Aliens and Frontiers Department. As regards information from investigations within the sphere of competence of the Criminal Investigation Department, the ENU takes information directly from the Integrated Criminal Information System.
- 5.2.7. The culture of competent national authorities forwarding information to Europol has emerged and has been consolidated through their participation in the analysis files. This process has been observed constantly by the ENU and has taken concrete form in the establishment of contact points with the various competent national departments and through the continuous coordination of involvement in the various analysis files.
- 5.2.8. Through work coordinated with the authority competent in the field of combating Euro counterfeiting, Portugal has contributed, by regularly forwarding information to Europol, to a first phase of supplying the interim information system and is currently feeding data into version 0.1 of Europol's information system.
- 5.2.9. The continuous supply of information to Europol will be optimised when the information system provided for in Article 7 of the Europol Convention comes into force because at that stage data will be supplied automatically by the Integrated Criminal Information System, a system which centralises criminal information at national level.

RESTREINT UE

5.3. USE OF INFORMATION AND EUROPOL ANALYSIS CAPABILITY

5.3.1. Portugal has taken part in various analytical work files since Europol started operating. The wish to participate, and sometimes a shortage of information, contributed to the decision to join some analysis files in connection with which no information was found to be available that could be channelled to Europol. This situation led to withdrawal later, when it was discovered that no information could be contributed. Portugal took the initiative of proposing that a file be opened on illegal immigration networks and is involved in 11 of the 17 files currently in existence.

5.3.2. Portugal takes the view that participation in Europol analysis files should be preceded by an analysis of the situation which led to their opening and should take place as a way of meeting criminal investigation needs in combating organised crime. Joining an analysis file presupposes a real and objective intention to share information; this is absolutely essential to the success of any project of this kind. With this in mind, the ENU has worked to raise the awareness of the competent national authorities, to make it possible to carry out feasibility studies which will be used to reach decisions on joining analysis files.

5.3.3. First of all, participation in an analysis file presupposes a specific operational need, arising from a threat which by its nature or size demands a precisely-timed and geographically specific approach. On this basis, not all analysis files are necessary for Portugal's law enforcement services, since some of them concern criminal activities which do not occur in Portugal or which, according to our national experts, are not among nationally established priorities in combating organised crime.

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5.4. PERCEPTION OF EUROPOL VALUE

- 5.4.1. Europol's essential role is to improve the effectiveness of the competent services of Member States and their co-operation in preventing and combating organised crime. In this light, bearing in mind that Europol became operational only towards the end of 1999, it has made significant progress in terms of growing involvement by Member States, but it is still far from ideal. Portugal believes, however, that the good results obtained through some analysis files and from Member States' operational projects supported by Europol, as well as the overall improvement of the reports drawn up by Europol, show that the way ahead should be based on a qualitative and quantitative increase in the flows of information from Member States to Europol.
- 5.4.2. It is Portugal's view that the delay and successive postponements in the implementation of the Europol Information System have resulted in information flows not being as regular or plentiful as they should be.
- 5.4.3. Indeed, accessibility and exchange of information should be seen as the fundamental objectives of Europol, along with crime analysis. Efforts should therefore be concentrated on creating conditions in which information exchange with Member States can take place without restrictions, which implies that the IT supports provided for the purpose should be fully functional.
- 5.4.4. On the other hand, Portugal is convinced that Europol should focus above all on operational questions, optimising resources currently assigned to lower priority areas to increase and enhance its status as a tool for combating international organised crime, in which role it unquestionably adds value. In that connection, Portugal emphasises the importance of the processing and strategic analysis of information

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- 5.4.5. Europol's added value is of course demonstrated by the various reports and bulletins that it produces, not only in terms of threat and risk assessment, but also through situation reports on aspects of crime affecting the EU. The importance of Europol's role from an operational point of view has, moreover, been shown on several occasions in connection with results obtained in the area of the analysis files, in Member States Operational Projects with Europol Support (MSOPES) and, fundamentally, in connection with the entry into circulation of the Euro and subsequent phases, in which efforts to coordinate and a concern to define procedural models and good practices were observed.
- 5.4.6. Bearing in mind the recent extension of the mandate to cover crimes listed in the Annex to the Europol Convention, various publicity projects for the other criminal police agencies are planned for the second half of this year.
- 5.4.7. Under the Framework Law on the Criminal Investigation Department, the ENU is a section of the Central Department For International Cooperation, has competence at national level and is, in accordance with Article 4 of the Europol Convention, the only liaison body between Europol and the competent national authorities.
- 5.4.8. With regard to the aspects mentioned, Portugal considers that information flows between Europol and Portugal may be assessed positively, taking into account the crime situation nationally. Analysis of the statistics submitted shows a rising trend of information exchange; particularly noteworthy is the qualitative improvement, manifested especially in the ever increasing operational nature of the cases handled. This situation, acknowledged by Europol itself in a recent evaluation report, shows that mutual trust exists and that Europol's added value is beginning to be recognised.

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6. EVALUATION¹ MADE BY EXPERT TEAM

6.1. Introduction

6.1.1. The evaluation mission lasted two days and covered all the services responsible in various ways for processing police information at both national and international level². The Portuguese authorities allowed the evaluation team to meet as many key interlocutors as possible. These authorities did a great deal to facilitate the work of the evaluation team, enabling it whenever necessary to meet those directly responsible for the aforementioned authorities.

6.1.2. Generally speaking, Portugal sets great store by the development of information exchanges at both national and international level. While the Portuguese authorities do not see any particular problems as regards the exchange of information or the national transfer of data from one enforcement agency to another³, such a statement needs to be put into perspective.

6.1.3. On several occasions during the evaluation it was obvious to the experts that, when it came to combating crime, spheres of competence were far too compartmentalised. Whether at national or international level, the law gives the Criminal Police sole power to deal with the most serious crime, namely organised cross-border crime. Conversely, Portugal has decided to rationalise its working methods in favour of a more horizontal approach in order to improve the internal exchange of information. As a result, the Prosecution and Investigation Department in Lisbon headed by the Attorney-General will henceforth have an integrated information system shared with the Criminal Police, and the Public Security Division is cooperating with the Criminal Police's security and information service on the development of shared databases in order to enhance cooperation on the ground. The SIIC (see point 6.2) is currently rationalising working methods in favour of a more horizontal approach in order to improve the internal exchange of information.

¹ Referring to the general comments made by Portugal, see Annex A, page 38.

² Except for information relating to terrorism.

³ See the report of the second evaluation round doc. 13594/1/02 REV 1 page 24.

RESTREINT UE

6.1.4. Nevertheless, regardless of decisions taken at national level on the sharing of tasks, it was manifestly clear to the evaluation team that, under the law, the present system of exchanging information was centralised, with responsibility resting solely with the Criminal Police. This situation was far from ideal and undoubtedly lacking in effectiveness at international level partly because of the lack of cross-representation at contact points responsible for exchange of information.

6.1.5. Similarly, the scattered locations of the various conduits used for exchanging information at international level made the management and processing of this information more complex.

6.1.6. Improvements are under way, and consideration is now being given to a better method of sharing information internally. However, there appears to be an urgent need for an internal rationalisation of the tools for exchanging information and for all the enforcement agencies to be more closely involved in the exchange of intelligence, so that threats can be better defined and more effective use made of the data from strategic analyses such as those produced by Europol.

6.2. Internal organisation of exchange of information.

6.2.1. In the context of the general structure of the Criminal Police described above, mention should be made of the particular role of the Integrated Criminal Information System (SIIC), which is responsible for managing all information from the criminal investigation services and all information provided by the PSP, GNR or the customs authorities that may have consequences in the area of criminal investigation. In fact, a certain amount of sensitive data and all information relating to suspicious, unlawful or criminal activities and decisions on penalties or detention orders can be managed only by departments with powers allocated by the legislator. In the report on the second evaluation round, the national authorities highlighted the cohesion of the system in jurisdictional and organisational terms. The evaluators wish to emphasise not only the limits of the present system but also the efforts made by Portugal to improve cooperation between the country's internal service.

RESTREINT UE

6.2.2. The SIIC comprises a national unit, central units, regional units and local units. There are criteria for the visibility of information depending on territorial and substantive jurisdiction. The visibility of information related to the opening of an investigation complies with a fundamental concept which presupposes a set of variables resulting from the characteristics of the opening of the investigation, coupled with the profile of the user and the unit to which he belongs. Fortunately, there is nothing to stop a local unit from seeking additional information. It may carry out a search and the system responds if information is available on that particular subject. Access to that information is not direct but via coordination mechanisms, which means that a local unit can always access the information entered at regional or central level. This is because the SIIC has a dual purpose and is not merely an information system but also a coordination tool which, in practice, means that it requires the intervention of hierarchical echelons at the headquarters of operational coordination. Lastly, it should be emphasised that, since there are test units at the PSP in Lisbon and Évora and at the GNR, the system already operates outside the framework of the Criminal Police.

6.2.3. One may justifiably query the division of labour between the Criminal Police, the GNR and PSP. These two services with more 40 000 staff would bring added value to intelligence gathering effort if they were involved equally in that process. Portugal is measuring the scale of the reforms to be carried out on the SIIC system since the police and the judicial authorities are working to finalise an integrated information system that should make for improved task-sharing and intelligence collection. This system will not really prove fully useful until detailed consideration is given to the role of the other Portuguese law enforcement agencies.

6.2.4. The customs authorities are not satisfied with the present organisational situation.

Furthermore, they have just taken initiatives such as that involving the creation of a database on the movements of recreational craft. This file, which is not yet operational, is intended for the customs operational services. However, the present system is based on the unchanging principle that the customs authorities deal only with non-criminal administrative information. It is interesting to observe that the information kept by customs is available to and can be consulted by the Criminal Police. The experts observed that, despite the importance of the customs authorities' tasks (such as maritime surveillance and container checks), the fact that they do not receive information from the other services prevents them from effectively

RESTREINT UE

feeding data into its own databases. The fact that the Criminal Police has no liaison officer at the customs directorate, and vice versa, is a significant reflection of the situation.

6.2.5. This compartmentalisation of departments hinders operational activities and urgent action needs to be taken to ensure increased cooperation between the judicial services and the customs authorities so that use can be made of customs data bases and intelligence.

6.2.6. A step in this direction was taken when the FIU was set up ¹. This new unit, which forms part of the Criminal Police and has the task of providing it with information on money laundering, terrorist funding and tax offences, is assisted by a GNR officer and has based within it the Permanent Liaison Group (GPL), set up under Decree-Law No 93/2003 of 30 April 2003, for cooperation between the Criminal Police (PJ) and the tax authorities as regards access to and processing of tax information of relevance to criminal cases, which is based at the PJ's FIU. The FIU has no investigatory powers; it simply provides information. According to senior Criminal Police officers, this unit is in the process of setting up a database which specifically covers its activities.

6.2.7. The PSP has at its disposal a central database which is linked up to a large network of terminals covering units spread throughout the country. For exchange of police information by way of international police cooperation, the PSP makes use of Interpol and Europol channels, based at the PJ's Central Department for International Cooperation, and of the SIRENE Bureau, coming under the Ministry of the Interior; the PJ. All international cases are assigned to the Criminal Police which has a PSP liaison officer attached to it for coordination purposes.

¹ Financial Intelligence Unit.

RESTREINT UE

- 6.2.8. This initiative should help decompartmentalise departments and not only promote the sharing of information but also facilitate the development of criminal analysis. In this sense the Portuguese authorities are showing the way forward by involving not only the PSP in this approach but also the GNR and the SEF.
- 6.2.9. However, despite the historical links between the Criminal Police and the Office of the Prosecutor-General, representatives of the Justice Ministry acknowledge that coordination of the circulation of police information presents numerous problems. Aware of these problems, the Lisbon DIAP (Investigation and Prosecution Department) and the investigating magistrates have now installed an integrated computer system. In addition, as regards the circulation of police information, since 1 January 2003, the Criminal Police and the Lisbon Public Prosecutor's Office (Investigation and Prosecution Department (DIAP)) have had a protocol enabling the Criminal Police to supply the SIIC with information obtained at the DIAP from files opened by other police forces or by the DIAP. This is a first conclusive experience which could shortly be extended throughout the whole country.
- 6.2.10. This system, which functions to the satisfaction of all those involved in the judiciary network, is to be encouraged as it creates a quality dynamic that obliges the whole police network to validate its information. The only way to maximise the quality of information production is to ensure that all sectors involved in security (notably SEF, PSP, GNR and Customs) participate fully in the effective production of information in their possession and put it to full use.

RESTREINT UE

6.2.11. For internal security purposes, the Portuguese authorities have developed a system for the weekly coordination of significant facts or foreseeable events. These analyses are conducted on the basis of a weekly meeting of police authorities (PSP, GNR, SEF and the Criminal Police) and intelligence services (Security Intelligence Service (SIS) and Strategic Military and Defence Intelligence Service (SIEDM)). Summary reports are then forwarded to the Minister of the Interior and the Minister of Justice. These analyses and exchanges of information are also discussed during regular meetings of the Higher Council for Internal Security at which security matters are discussed – including intelligence matters. The Council is answerable directly to the Prime Minister.

6.3. External exchange of information

6.3.1. The CDIC¹ of the Criminal Police is responsible for exchange information with foreign agencies. Its involvement takes the form of checking on completion of statutory and regulatory procedures (legality) and on the quality of information exchange, in full compliance with the provisions of both legislation on protection of personal data and the Europol Convention and Interpol rules. Portugal has decided for the time being not to combine the different channels of contact with the police departments in a joint section as recommended in the recommendation 1 of the High Level Group's Action Plan on Organised Crime (1997). This means that the SIRENE Bureau is a service answerable to the SEF Directorate (Aliens and Frontiers Department), while the ENU and the Interpol's NCB come within the Criminal Police. Both of them are located in two different places.

The DGAIEC is heavily involved in exchanging administrative information which may be of relevance in crime prevention and investigation, particularly with its European Union counterparts.

¹ Central Department for International Cooperation.

RESTREINT UE

6.3.2. Representatives of the Criminal Police, the GNR, the PSP and the SEF work in the SIRENE Bureau. In view of the areas covered by the DGAIEC and its new investigatory powers, Portugal should be encouraged to include a representative of that administration on the current team in the SIRENE Bureau. Moreover, as Customs provide international cooperation through OLAF ¹ and the WCO ², representation within the SIRENE bureau would certainly make exchanges and cross-checking of data and information more effective.

6.3.3. The experts have observed major operating difficulties in this Bureau. Staff have access to all police data bases except those of the Criminal Police. This situation obliges staff to request additional information from the headquarters of the Criminal Police. As there is no on-line access, requests are faxed, and according to the Director of the Bureau, several weeks can elapse before the information is provided. This situation doubtless explains the frequent use of direct contact, for example with liaison officers.

6.3.4. The fact that the SIRENE Bureau do not include a joint section has two surprising consequences. Firstly, when the SIRENE bureau refers matters to the Criminal Police, the latter sometimes sends replies directly to the person who requested the information from the SIRENE Bureau. Secondly, the lack of on-site consultation with a multi-disciplinary team means that the requests for information are very often sent to all or any of the international channels (Europol, Interpol etc.).

¹ European Anti-Fraud Office.

² World Customs Organisation.

RESTREINT UE

- 6.3.5. In the light of the foregoing, the Portuguese authorities must now, as a first step and as a matter of urgency, combine in the same section the units responsible for the international exchange of information - the NSIS, SIRENE, the Europol National Unit and Interpol's NCB. Representatives of all departments in charge of security must have liaison officers in this section. This would enable Customs, for example, to participate in the activities of the SIRENE Bureau and would allow other police forces, currently not part of the Europol National Unit, to be represented in that Unit. Once it is decided to set up a combined section, steps will have to be taken to ensure that the future unit is located in the same office or at the very least on the same floor, with, for example, Interpol's NCB grouped with the Europol National Unit.
- 6.3.6. The creation of a national coordinating unit would be effective only if supported by a common intelligence IT platform which would provide a central coordinating point for all international enquiries and at the same time provide a centre for the exchange and collection of all intelligence.
- 6.3.7. On a general level, the experts have observed few guidelines for the promotion of a strategic analysis. It has been noted, however, that efforts have been made, notably in the context of SEF activities on immigration issues, where the central department of investigation has developed this type of working method. Improved on-line access to, and the sharing of, information stored in the SIIC operated by the Criminal Police for the DGAIEC, the GNR and the PSP would undoubtedly upgrade considerably the quality of intelligence work and make investigations and international requests more effective.

RESTREINT UE

6.3.8. On a more global level, consideration could be given to loosening the Criminal Police's current monopoly over all criminal cases. There is no doubt that Portugal needs to embrace a wider concept of information which is not confined to criminal investigations in the strict sense. The Lisbon Investigation and Prosecution Department acknowledges that in most cases the Criminal Police themselves assist the judicial authorities as to the channels to use for passing information abroad. In cases of money laundering, the DIAP uses the FIU, preferring to use liaison officers for drugs-related matters. For letters of request, the DIAP confirmed that, apart from the rules laid down in the Schengen Convention, the letters could pass through Europol and be returned directly to the judicial authorities which had initially requested the information. Finally, the judicial authorities have said that they increasingly have recourse not only to the European Judicial Network but also to Eurojust.

6.3.9. This situation reveals dispersed flows of information and a lack of consistency. On the other hand, Customs complain that they receive no information from services based abroad, which prevents them from feeding information into their own internal files. In this connection the Portuguese authorities must ensure that the consultation procedure – the aim of which is to ascertain those responsible for entering intelligence into the FIDE¹ – is applied, further to the amendment of the Naples Convention. As this database is intended inter alia for the customs, coastguards and police departments, special care must be taken to ensure that information is shared appropriately. The fact that Portugal has set up a joint group combining the Criminal Police, Customs and Justice Departments to resolve this problem is evidence enough that it is on the right track as regards rationalising the work. Unfortunately, the experts were unable to obtain any useful information on the introduction of CIS², which was to become operational as from 24 March 2003.

¹ Customs Files Identification database (FIDE).

² Customs Information System.

RESTREINT UE

The Portuguese authorities will have to continue the consultation procedure, aimed at ascertaining those responsible for entering intelligence in the Customs Files Identification Database (FIDE), further to the amendment of the Convention concerning the Customs Information System (CIS Convention). As that database is intended, inter alia, for customs and other authorities with customs investigation powers (Article 12a(2) of the CIS Convention), special care must be taken to ensure that information is shared appropriately. In order to resolve a similar problem, under the Naples II Convention on Mutual Assistance between Customs Administrations, currently being ratified, the Portuguese authorities set up a working party composed of representatives from the Ministry of Finance (General Directorate for European Affairs and International Relations (DGAERI) and General Directorate for Customs and Special Consumer Taxes (DGAIEC)), the Ministry of Justice (PJ) and the Ministry of the Interior (GNR) to deal with the Convention's application and implementation.

6.4. EUROPOL

6.4.1. Europol is represented in Portugal by the Europol National Unit whose headquarters are situated at the Criminal Police Headquarters. This unit consisting of five officials has terminals providing access to the databases of the PJ and of other institutions with which the PJ has agreements, such as the PSP and the General Directorate for Prison Facilities. It was not in operation when the experts visited and does not appear to operate on a permanent basis (unlike the SIRENE Bureau). At the operational level, it would appear that most of the time the investigators themselves decided which channel to use (Interpol or Europol). Moreover, the ENU does not have the means to check the quality of the information sent, for example, in order to be able to redirect the information. Should doubts arise, a change in the destination of any information is always the result of individual initiative, through personal contact. Senior Criminal Police Officers are currently engaged in the technical development of a database

RESTREINT UE

which will facilitate image processing. The main characteristic of Portugal's ENU is that no department outside the Criminal Police may enter into direct contact with this national unit. The Portuguese representative explains that Europol is represented in Portugal by the Europol National Unit (ENU), in accordance with Articles 1(2) and 4 of the Europol Convention. The ENU is the only body for liaison between Europol and the competent national authorities. Relations between the ENU and the competent authorities are governed by national law (Article 4(3) of the Europol Convention).

6.4.2. While the experts have no difficulty in understanding how important it is for the Criminal Police to regulate information flows in this way, they have misgivings about the fact that it can slow things down considerably for external departments. Similarly, when one police service sends information intended for the ENU, all of this information is initially filtered by the SIS, which may or may not decide to transfer it to the ENU. Again, when Europol sends a request to the ENU, it must pass initially to the SIS which decides whether or not to forward it to the competent law enforcement authorities. The Criminal Police justify this role and way of operating by the fact that all SIS staff are police staff and hence authorised to decide whether or not information should be sent to the ENU.

6.4.3. From Europol's point of view, the liaison officer will be allowed access, where appropriate with an investigating service, provided that he has made a preliminary application to do so and has received authorisation from Criminal Police headquarters

6.4.4. The customs department complained about the situation and informed the team of experts that Europol had been in contact with the Ministry of Finance to know whether the Portuguese Customs were interested in sending a customs liaison officer to Europol headquarters. Customs would like to have such a post but are awaiting a political decision on this point ¹. Remembering that Customs are no longer represented in the SIRENE bureau, the experts can only recommend that international contacts be extended in the interests of the customs administration.

¹ Portugal has two police liaison officers attached to Europol.

RESTREINT UE

6.4.5. Despite these internal organisational problems which inevitably impact upon the quality and quantity of information exchanged with other Member States, Portugal reports few difficulties regarding the exchange of information. In particular the Prosecutor in charge of the Lisbon DIAP stressed that there were few obstacles to receiving information from Member States.

6.4.6. In general, Portugal has recorded an increase of approximately 10% in requests for information to be sent to Europol. These requests mainly concern drug trafficking, vehicle trafficking, counterfeiting money and illegal immigration. This issue, which is mainly the responsibility of the SEF, as regards facilitation of illegal immigration and of unlawful residence, which constitute criminal offences, explains the department's commitment to its relations with Europol. It participates essentially by taking part in numerous AWF¹. As illegal immigration is not properly a crime, the SEF has been participating in Europol activities (naturally via the ENU) independently of the PJ. In fact outside the criminal police, the SEF is the only police force that has a good knowledge of Europol, supplying information to The Hague on a regular basis, participating in AWF² and operations (HIOs, RIOs, LEDA, PEGASUS etc.) and regularly attending Europol meetings on illegal immigration and trafficking in human beings. This sustained effort by the SEF does not prevent it from expressing criticism on the effectiveness of cooperation. The SEF has reported that some Member States are slow to provide information even if this department, like those of the Criminal Police, has not laid down any rules as to the quality of information or average response time.

6.4.7. For the Portuguese Criminal Police, Europol is not an intelligence agency and in that respect information to be forwarded to Europol must be judicial information. In fact, this statement contradicts the SEF's immigration activities in respect of Europol.

¹ AWF: analytical Work Files

² Molduk was one of the department's initiatives.

RESTREINT UE

- 6.4.8. On the key issue of knowledge of Europol the evaluation team can only report a lack of information in this area. No department seems to know exactly what Europol's tasks and responsibilities are. None of the departments visited were familiar with Europol's analyses and publications. By way of example, the Head of the Investigation and Prosecution Department (DIAP) in Lisbon had no knowledge of Europol's publications on strategic information either on crime in general or any specific topics.
- 6.4.9. The department which appears to provide some training is the SEF (both on the role of Europol and on information exchange channels). It will be immediately suggested that Portugal circulate them widely to all police and customs departments and to the criminal justice authorities. The Higher Institute for Criminal Investigation and Criminology also provides training which is open to the PSP and the GNR, although the experts were not able to assess its precise impact. The Central Office for International Cooperation of the Criminal Police indicated that it also provided training for the PSP and the GNR, although the experts were not able to assess its precise impact. (Se paragraph 5.2.3)
- 6.4.10. On the other hand, the non-distribution of general information published by Europol and sent to the Criminal Police was a serious omission. The experts have been informed of the project to place certain information on the institutions' intranets in order to get round the fact that not all work stations have CD-ROM drives. Other institutions do not have that problem and receive their information by computer channels. A recommendation will be sent to the administration of the Criminal Police to take all steps to ensure that the information produced and circulated by Europol in Portugal can at least be sent out to the services dealing with international crime.

RESTREINT UE

7. GENERAL CONCLUSIONS AND RECOMMENDATIONS OF THE EXPERT TEAM

- 7.1. As emphasised in the introduction, throughout the evaluation Portugal demonstrated both its interest in developing international exchanges in the field of judicial and police cooperation and its keenness to improve existing structures. The experts were able to observe how the activities of many ministerial departments in this area are changing. Some areas, in particular the customs department, are extending their powers and activities. The tasks of the police departments are also increasing, partly owing to the new forms of crime arising from the arrival of new forms of illegal immigration for instance, but also to the increasing demands of their European partners, thanks to new instruments for international cooperation such as those formulated by the Member States via Europol.
- 7.2. In general the very legally-minded Portuguese authorities meticulously apply both national and international law, as seen with the implementation of the Schengen Convention and the Europol Convention.
- 7.3. Moreover, historical tradition and the organisational system which links the Criminal Police and the Ministry of Justice sometimes cast a rather deep shadow over other services, which do not always feel included in a way that befits their current capacities and ambitions.
- 7.4. Various ministerial departments demonstrated throughout the visit how concerned they were to improve the quality of exchanges of information without in any way denying the many difficulties they faced. The expert team was told that Portugal does not have to deal with vast amounts of serious international crime and has so far not had to cope with major threats. However, current trends mean that Portugal is not safe from new threats from organised crime. Bearing this in mind, a more efficient coordination of its assets and capacities would enable Portugal to respond better to future challenges and facilitate ever increasing cooperation with its European partners. Moreover, a strengthening of the internal structures that facilitates exchanges of information between departments will help improve cooperation with Europol.

RESTREINT UE

7.5. For Portugal:

- 7.5.1. Establish as soon as possible an national coordination unit to combine the services dealing with national and international cooperation – ENU, Interpol NCB, SIRENE – and ensure that all these units are on the same floor of the same building. This arrangement would ensure compliance with recommendation 1 of the 1977 Action Plan of the High Level Group.
- 7.5.2. Appoint to the national coordination unit a representative from each of the ministerial departments dealing with security – the Criminal Police, GNR, PSP, SEF and DGAIEC.
- 7.5.3. Continue to develop as quickly as possible the work begun by the Portuguese authorities in allowing all enforcement agencies access to the SIIC in order to provide the common IT platform which will support the national coordination unit.
- 7.5.4. Establish effective procedures to break down the divisions between services by authorising, for example, exchanges of information so that the various ministerial departments can use each other's databases more effectively.
- 7.5.5. Examine in detail the new powers of investigation granted to the GNR, PSP SEF and DGAIEC to see what further adaptations could yet be made to extend the investigative scope of these ministerial departments. In particular, the extension of their powers since 1 January 2002 to certain offences listed in the Annex to the article 2 of the Europol Convention should provide the opportunity to involve all the departments with responsibility for security.
- 7.5.6. Pursue the development of weekly coordination meetings between the departments of the various administrations while examining in depth the methods to be adopted to allow on-line inter-service access to the various existing databases.

RESTREINT UE

- 7.5.7. Encourage as far as possible the exchange of liaison officers between departments with responsibility for combating all forms of international crime.
- 7.5.8. Promote the production of a guide laying down the rules and procedures explaining the choice of information channels to be used by those staff employed within the national coordination unit.
- 7.5.9. Apply generally and without delay the recommendation formulated during the second evaluation exercise to promote strategic analysis methods and training for all law-enforcement agencies. The general systematic introduction of these methods initiated by the Criminal Police and the SEF are initiatives to be encouraged.
- 7.5.10. Specify precisely who is responsible for entering data into customs databases such as FIDE and CIS and at the same time lay down a new framework for exchanges of information between police and customs departments.
- 7.5.11. Immediately strengthen the ENU's human resources and ensure that the unit provides an operational presence. Consider increasing staff levels within the ENU to improve effectiveness.
- 7.5.12. Establish a procedure for circulating Europol's strategic productions and analyses to all the services concerned.
- 7.5.13. Develop a strategy facilitating and promoting police departments to contact the Europol National Unit directly. (Article 1)
- 7.5.14. Establish an action programme to develop the national services' understanding of Europol's role and missions.

RESTREINT UE

7.6. For **EUROPOL**

7.6.1. Provide follow-up and check with the Member States that the documents concerning strategic analysis and other documents of general interest produced by Europol are actually circulated to the relevant services. Ensure that the technological form in which they are produced is compatible with the means available in the departments of the countries to which they are sent.

7.6.2. In association with the Member States, draw up a strategic plan to ensure that they have training programmes and information on Europol's structure and missions.

7.6.3. Consider creating a means of assessing the quality of the information received and the response times to questions put by Member States.

7.7. For other Member States:

7.7.1. Draw up without delay practical rules for law-enforcement agencies and judicial authorities to help them make better use of the international channels of communication that exist to facilitate and improve the transfer and processing of international requests for information.

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GENERAL COMMENTS FROM THE PORTUGUESE AUTHORITIES

In general, the Portuguese authorities share the concern expressed in the Recommendations made in this report (see point 7).

They consider it necessary, however, to make some general comments on those Recommendations as a framework for other comments and suggestions concerning specific aspects of the report.

As regards the internal allocation of powers of criminal investigation, the organisational model in use in Portugal is the result of historical and cultural traditions, that have informed the legislative choices made, to produce a distribution of powers, in the field of investigation, amongst various authorities under different Ministries. Of those authorities the most prominent is the PJ (Criminal Police), being entrusted with exclusive powers to investigate the most serious crime, that is to say, organised transnational crime.

In addition, the PSP and GNR staff referred to in point 6.2.3, have public security duties that are not directly related to investigation, since a large proportion of those staff are occupied with the investigation of mass crime, which accounts for some 80% of all crime investigated.

With recent legislative developments, however, that is to say the publication of the Law on anti-crime brigades and mixed units (Decree-Law No 81/95 of 2 December 2000), and in particular the Law on the organisation of criminal investigation (LOIC) (Law No 21/200 of 10 August 2000), the activities of those units have taken on greater importance in the field of criminal investigation. It is therefore possible to say that the LOIC has already led to an extension of the criminal investigation powers of those police departments, which is in line with what is proposed in Recommendation 7.5.5. In fact, the aforementioned Law on the organisation of criminal investigation (Law No 21/200 of 10 August 2000) laid down a set of principles and rules with the objective of enhancing cooperation and the effectiveness of criminal police bodies with general powers – the Criminal Police, the National Republican

RESTREINT UE

Guard and the Public Security Police.

Inter alia, that instrument conferred powers on those criminal police bodies within the framework of the criminal investigation system.

Accordingly, it is generally incumbent on the criminal police bodies with general powers – the Criminal Police, the National Republican Guard and the Public Security Police – to assist the judicial authorities in investigation and to carry out preventive and investigative activities within their remit or entrusted to them by the relevant judicial authorities.

Moreover, those three bodies' specific powers are interconnected within the criminal investigation system.

It is within this general context that the internal organisation of information exchange must be seen.

As the report recognises, the Portuguese authorities are working on the Integrated Criminal Information System – SIIC – set up by the new Criminal Police Framework Law set out in Decree-Law No 275-A/2000 of 9 November 2000. As laid down in Article 8(3) of the LOIC the SIIC will, through a regulation to be published, be extended to the communication of information between the various police bodies and between them and the judicial authorities.

In this context it must be pointed out that it is a question of making the system fully operational rather than reforming it (see point 6.2.3).

In addition, the creation of the GPL – the Permanent Liaison Group, headquartered at the FIU, the Criminal Police Financial Information Unit – through Decree-Law No 93/2003 of 30 April 2003, ensured direct access in real time by the Criminal Police to the data bases of the tax administration and by the competent bodies of the tax administration to the SIIC, for the purpose of obtaining information relevant to criminal investigation operations.

In addition, mention must be made of the contribution made by the DGAIEC (Direcção-Geral das Alfândegas e dos Impostos Especiais sobre o Consumo - General Directorate for Customs and

RESTREINT UE

Special Consumer Taxes) to the exchange of administrative information that might prove to be relevant to crime prevention and investigation.

Finally, it is important to mention the protocol concluded on 1 January 2003 between the Criminal Police and the Lisbon Public Prosecutor's Office (DIAP - Departamento de Investigação e Acção Penal - Investigation and Prosecution Department), which will enable the Criminal Police to supplement the ICIS information by entering information obtained from the DIAP, originating in files created by other police forces or by the DIAP. That mechanism promotes the sharing of information relevant to crime investigation and will help to correct possible inadequacies in the sharing of information.

As regards responsibility for the communication of information to foreign agencies (see point 6.3.1), the law also defines the bodies responsible for the exchange of information with foreign bodies: the Criminal Police through the CDIC (Departamento Central de Cooperação Internacional - Central Department for International Cooperation) and the SIRENE National Bureau, responsible for the SCHENGEN Information System (SIS).

Reference must also be made to the channels set up under Naples I Convention and Council Regulation No 515/97, and also the bilateral and multilateral mutual administrative assistance conventions, where significant contributions are made by the DGAIEC and the Ministry of Finance to the exchange of administrative information that might be relevant to crime prevention and investigation.

As regards the criteria for the communication of such information, it is for the operational departments and the competent judicial authorities to decide whether and when specific information is to be communicated. In this context, the Criminal Police/CDIC is involved in monitoring completion of the legal and regulatory procedures and the quality of information exchange, in strict compliance not only with the rules of the Personal Data Protection Act but also with those of the Europol Convention and of Interpol.

Also in the field of the exchange of information with foreign agencies, it should be noted that the solution advocated in the report (see point 6.3.2) does not correspond to Portugal's national option.

RESTREINT UE

In fact, it is felt that SIRENE exists to manage the information contained in SIS and exchange information additional to that with Portugal's other partners, and is not a body or department set up for police cooperation or for the processing of such information.

In this context no justification is seen for the presence of Customs at SIRENE since Customs has no information suitable for inclusion in SIS, as laid down in the relevant provisions of the SCHENGEN Convention (see point 6.3.2). That is the reason why, having previously participated in SIRENE, the DGAIEC has ceased to have a representative in that Bureau.

On the other hand, in order to make economical use of resources (taking advantage of a whole organised structure with facilitated foreign communications, operating twenty-four hours a day, with the presence of all police departments), Portugal (following the suggestions made in the SIRENE Manual itself) has opted to recognise SIRENE as a national central body for the purposes of three of the forms of enhanced police cooperation (Schengen), since that of vigilance would have to be a matter for the Ministry of Justice/Criminal Police (only that body and the DGAIEC can perform that form of cooperation).

Since SIRENE is a communication channel and not one for the performance of police cooperation – and in this instance the role is accessory to its principal functions – it would appear that it neither can nor should be assessed in terms of location and cooperation in a context that takes account only of accessory roles and not of essential ones (see point 6.3.3).

In short, the relevant role performed by the Criminal Police in this matter is a consequence of an option that the Portuguese legislator has considered appropriate (see point 6.3.8).

As regards the functioning of the Europol National Unit – ENU – it is noted generically that this structure is appropriate for the flow of information recorded and corresponds to the requirements that the system has demonstrated so far. Other more specific comments and suggestions are made in connection with practical aspects of the report (see point 6.4.1).

RESTREINT UE

At the same time it is pointed out, with regard to the Criminal Police's interest in regulating information flows to foreign bodies by means of the former filter of the SIIC (see point 6.4.2), that the SIIC is a national system, defined as such by the political authorities, and its manner of operation is regulated by an act of the Assembly of the Republic – the aforementioned Law on the organisation of criminal investigations (LOIC).

In conclusion,

We do not believe, therefore, that specific organisational models ought to be assessed – they are always dependent, as has been pointed out, on historical and cultural factors and legitimate national legislative options – but rather their effectiveness in achieving the objectives defined in this evaluation; in this case, that would mean the effectiveness of the exchange of information between the Member States and Europol and amongst the Member States, since such exchanges also depend on exchanges of information between the national authorities competent in those matters (see points 6.3.4, 6.3.5, 7.3 and 7.5.1).

As regards the recommended solution of combining the international cooperation departments in the same organic structure and the same physical space, it is felt, in the light of the foregoing general comments, that that solution is one of the possibilities, to be considered in appropriate fora.

That consideration will be carried out, in the light of the government's programme, in particular where it provides, in the security field, for the definition of practical measures that will ensure more effective coordination of the Security Forces, especially as regards their organic coordination, and the creation of an integrated criminal information system, with differentiated levels of access, that centralises the information received.

RESTREINT UE

ANNEX B

PROGRAMME OF VISITS

Wednesday 25 June

Arrival of national experts

Accommodation

Thursday 26 June

09.30 – 10.30 Initial meeting and welcome address by the National Director of the Criminal Police

10.30 – 11.30 Visit to Europol National Unit

11.30 – 13.30 Visit to Criminal Intelligence and IT Departments of the Criminal Police

13.30 – 15.00 Lunch

15.00 – 16.30 Visit to National Republican Guard

17.00 – 18.30 Visit to Customs Department

20.30 – Dinner

Friday 27 June

09.30 – 11.00 Visit to Aliens and Frontiers Department

11.00 – 13.00 Visit to Sirene

13.00 – 14.30 Lunch

14.30 – 16.00 Visit to Public Security Police

16.30 – 18.00 Visit to Prosecutor's Office

18.00 – 19.00 Final meeting and conclusions

RESTREINT UE

ANNEX C

LIST OF PERSONS MET

- **PORTUGUESE CRIMINAL POLICE (POLÍCIA JUDICIÁRIA)**

- Adelino Salvado, National Director of the Criminal Police - PJ
- Jaime Fernandes, Director of the Central Department for International Cooperation - DCCI
- Joaquim Pereira, Head of the Europol National Unit - ENU
- Vitor Antunes, Deputy HENU - ENU
- Jose Apolonia, Security / System administrator - DTI
- José Neto Lopes, Head of System Manager Unit - DTI

- Ramos Caniço, Director of Central Information Department - DCICPT
- Rodrigues Duarte, Chief Inspector, National Information Unit - DCICPT

- **PUBLIC SECURITY POLICE (POLICIA DE SEGURANÇA PUBLICA)**

- Mário Belo Morgado, National Director of the PSP
- Victor Rodrigues, Inspector (Subintendente), Head of the Information Coordination Division
- António Moreira Rocha, Commissioner, National SIRENE Bureau
- Francisco Oliveira. Pereira, Superintendent, Director of the PSP Operations Department
- Constantino Ramos, Inspector (Subintendente), PSP Operations Department

- **NATIONAL REPUBLICAN GUARD (GUARDA NACIONAL REPUBLICANA)**

- Rui Alexandre Cardoso Teixeira, Major-General, Chief of Staff
- António José Filipe Tomás, Lieutenant-Colonel, Excise Squad
- Albano da Conceição Martins Pereira, Major, Directorate for Criminal Investigation
- Paulo António Pereira Soares, Captain, International Relations Department
- Paulo Jorge Silva Rebelo Manuel, Captain, Directorate for Criminal Investigation / Crime Analysis

- **DGAIEC (DIRECÇÃO-GERAL DAS ALFÂNDEGAS)**

- José Figueiredo, Deputy General Director
- João Barreto, Director, Anti-Fraud Department
- Flávio Espada, Head of the Intelligence Services
- Jorge de Almeida, Head of the Planning and Control Services

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- **DEPARTMENT OF CRIMINAL INVESTIGATION AND PROSECUTION (DIAP)**
 - Francisca van Dunem, Deputy Attorney-General
 - João Ramos, Attorney-General
- **ALIENS AND FRONTIERS DEPARTMENT (SERVIÇO DE ESTRANGEIROS E FRONTEIRAS)**
 - Ester Guedes, Head of SIRENE
 - Isabel Burke, Director of investigation, Research and Analysis
 - Joaquim Pedro Oliveira, Head of the Investigation Department
 - José van der Kellen, Head of the Research and Analysis Department
 - Maria de Fátima Silva, Head of Training

DECLASSIFIED

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ANNEX D

LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	PORTUGUESE	ENGLISH TRANSLATION OR EXPLANATION
AWF	-	Analytical Work Files (Europol data record)
CDIC	-	Central Department for International Cooperation
DCIPAI	Direcção Central de Investigação, Pesquisa e Análise de Informação	Central Directorate for Investigation and Information Analysis
CIS	-	Customs Information System
DCCI	Departamento Central de Cooperação Judiciária da Policia Judiciária	Central Judicial Cooperation Department
DCIAP	Departamento Central de Investigação e Acção Penal	Central Investigation and Prosecution Department
DGAIEC	Direcção-Geral das Alfândegas e dos Impostos Especiais sobre o Consumo	General Directorate for Customs and Special Consumer Taxes
DIAP	Departamento de Investigação e Acção Pena	Department of Criminal Investigation and Prosecution
EIS	-	Europol Information System
ELO	-	European Liaison Officer
ENU	-	Europol National Unit
FIDE	-	Customs Files Identification Database
FIU	-	Financial Intelligence Unit
GNR	Guarda Nacional Republicana	National Republican Guard

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ACRONYM ABBREVIATION TERM	PORTUGUESE	ENGLISH TRANSLATION OR EXPLANATION
OLAF	Organismo de Luta Anti Fraude	European Anti-Fraud Office
PJ	Polícia Judiciária	Criminal Police
PSP	Polícia de Segurança Pública	Public Security Police
SEF	Serviço de Estrangeiros e Fronteiras	Aliens and Frontiers Department
SIIC	Sistema Integrado de Informação Criminal	Integrated Criminal Intelligence Service
SIRENE	-	Supplementary Information Requested at National Entry
SIS	Serviço de Informações de Segurança	Information and Security Service
WCO	-	World Custom Organisation