

THE CSDP HANDBOOK ON

Advisory Support to Tackling Organised Crime



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CMC Finland CSDP Handbook Series, Vol. 1. 2019

Series editor: Jyrki Ruohomäki (research@cmcf Finland.fi)

ISBN: 978-952-67127-3-4 (nid.)

ISBN: 978-952-67127-4-1 (PDF)

ISSN: 2670-0166

Layout: PunaMusta Oy

Cover design: Lea-Maija Laitinen

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The CSDP Handbook on Advisory Support to Tackling Organised Crime

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CMC Finland

A foreword from the publisher

CMC Finland was founded in 2007 and it functions as a single agency, responsible for training and deploying Finnish crisis management experts and fulfilling their material and logistical needs. CMC Finland also works as an employer of Finnish secondees to civilian crisis management missions. Since the beginning, research and development (R&D) activities have been an integral part of the centre and, with the revised national legislation that came into effect this year, R&D is listed as equal to the other core responsibilities of the centre mentioned above.

The R&D activities of the centre focus on not only improving the functions of the centre itself but also on reaching out to wider audiences and developing civilian crisis management globally. We have worked together with numerous national and international partners in R&D projects on topics such as Resolution 1325, gender and the effectiveness of crisis management. The results of these projects are disseminated not only academically but also through practice-oriented handbooks, checklists and manuals.

This year marks the start of the process to move CMC Finland to Helsinki from Kuopio, where it has been located since 2007. In 2020, CMC Finland will open its new premises in the capital. The transfer marks a significant next step in the evolution of the centre and we hope that it will only improve our ability to interact with our local and international partners and serve the experts of civilian crisis management and peacebuilding. Together with the relocation, the resources of CMC Finland are expanding as the Government of Finland is increasing the funding of the centre, concurrently with a similar expansion of its budget for deployments. The funding increase will manifest in the commitment of Finland to civilian crisis management and its development.

This handbook is an indication of this continuous and increasing engagement as it is a first in series of CMC Finland handbooks for CSDP practitioners that we are launching. Organised crime was selected as the topic of the first volume as it is a highly topical example of the new areas towards which civilian crisis management is expanding. With this handbook, CMC Finland wants to provide state-of-the-art and up-to-date practical tools for experts working with organised crime in different CSDP missions. We also hope that this handbook will be read and used outside missions, wherever this important topic is discussed.

Kuopio and Helsinki, 20 September 2019

Kirsi Henriksson

Director

CMC Finland

Acknowledgements

This handbook, *The CSDP Handbook on Advisory Support to Tackling Organised Crime*, was prepared by Paulius Kli kunas¹ and Tanja Tamminen² in close cooperation with Sergii Rybchenko and Ievgen Vorobiov. All four served in the EU Advisory Mission (EUAM) in Ukraine and later established a Research Initiative on Organised Crime (RIOCC) together. In the CSDP missions, the locally recruited personnel play a crucial role as interpreters of local information. They serve as a bridge between foreign actors and the local environment. Failure to acknowledge local knowledge will lead to failure in delivering effective assistance. Sergii Rybchenko and Ievgen Vorobiov have made a major contribution to the writing process of this book. Tamminen has also benefited from her long-term experience in the Balkans. Local expectations are sometimes very different to what the EU mission can deliver within its mandate. This always puts the adviser in a delicate situation, balancing the wishes of the local counterparts and the chain of command. Local knowledge is also key in the planning phase of any new CSDP mission.

The authors want to thank Jari Liukku, Head of European Serious and Organised Crime Centre in Europol, as well as Robertas Šimulevičius, Head of the Criminal Intelligence Training Center in Lithuania for sharing their extensive knowledge. Teppo Sovelius, Mika Antosalo, Anna Palmén and Cristian Jokinen provided the handbook's input and lessons from other missions including EULEX Kosovo and EUAM Iraq. The authors are grateful for the valuable suggestions and comments received from Hans Fagerström, Noora Välimäki, Jyrki Ruohomäki and Lotta Jokinen.

The writing of this book was motivated by the everyday challenges encountered by Common Security and Defence Policy (CSDP) mission members focusing on organised crime. The authors designed it to assist advisers supporting host-country authorities to develop strategies, structures and tools to better tackle organised crime and disrupt organised crime groups. Thus, the authors want to thank all the mission colleagues who have inspired and encouraged the writing process, as well as their Ukrainian counterparts in several law enforcement agencies who, in practice, have provided this publication with important lessons learnt and best practises to be implemented in other contexts.

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This handbook on tackling organised crime is the first in a series of CSDP handbooks to be published by the Crisis Management Centre (CMC) Finland in the coming years. The authors are thankful to Kirsi Henriksson, Head of CMC Finland, and the whole staff for the confidence expressed during the writing process, as well as for the design, printing and dissemination of this handbook. In addition, the authors gratefully acknowledge the support provided by the EU Police and Civilian Services Training (EUPCST) consortium, a project funded by the Instrument contributing to Stability and Peace (IcSP). The EUPCST workshop called 'The advisory role of CSDP Missions in disrupting Criminal Organisations in host countries', organised during 9–11 October 2019 in Järvenpää, Finland, will be the launch event of this handbook.

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List of abbreviations

AU	African Union
CEPOL	European Union Agency for Law Enforcement Training
CMC	Crisis Management Centre (Finland)
CPCC	Civilian Planning and Conduct Capability in the EEAS
CSDP	Common Security and Defence Policy
CSO	civil society organisation
CSSR	civilian security sector reform
EBCGA	European Border and Coast Guard Agency (Frontex)
EEAS	European External Action Service
EU	European Union
Eurojust	European Union's Judicial Cooperation Unit
Europol	European Agency for Law Enforcement Cooperation
FBI	Federal Bureau of Investigation (USA)
GRECO	Group of States against Corruption (Council of Europe)
HoM	Head of Mission
HQ	headquarters
ICITAP	International Criminal Investigative Training Assistance Program (USA)
IcSP	Instrument contributing to Stability and Peace (EU Commission)
INL	Bureau of International Narcotics and Law Enforcement Affairs (USA)
INTERPOL	International Criminal Police Organization
ISP	Integrated Approach for Security and Peace Directorate in the EEAS
JHA	Justice and Home Affairs
LEA	law enforcement agency
MLA	mutual legal assistance
MMA	monitoring, mentoring and advising
NATO	North Atlantic Treaty Organization
NC	national coordinator
NGO	non-governmental organisation
OC	organised crime
OCFS	organised crime fighting structure
OCG	organised crime group
OECD	Organisation for Economic Co-operation and Development
OPLAN	operation plan
OSCE	Organization for Security and Co-operation in Europe
ROCTaF	Regional Organised Crime Task Force
SECDEFPOL	Security and Defence Policy Directorate in the EEAS
SOCTA	Serious and Organised Crime Threat Assessment
SOP	standard operating procedure
TOC	transnational organised crime
UN	United Nations
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
UNOPS	United Nations Office for Project Services
UNSCR	United Nations Security Council Resolution
UNTOC	United Nations Convention against Transnational Organized Crime

Introduction

Transnational organised crime (TOC) is a major threat to international security and stability as well as to domestic and global economies. When tackling organised crime, the focus is not on specific types of crime, it is about criminality ranging from drug trafficking to serious violent crimes being committed systematically and within criminal structures. The **United Nations Convention Against Transnational Organized Crime**,³ the so-called Palermo Convention, entered into force on 29 September 2003 and the European Union (EU) is committed to supporting its implementation. Recently, on 19 July 2019, the United Nations (UN) Security Council adopted **Resolution 2482**⁴ on the linkages between international terrorism and transnational organised crime. The resolution expresses concern that terrorists benefit from organised crime and calls on states to consider establishing appropriate laws and mechanisms that allow for the *broadest possible international cooperation*.

In the EU legislation, article one of the 2008 **Framework Decision on Organised Crime**⁵ defines the term ‘criminal organisation’ very much in line with that of ‘organised criminal group’ in the Palermo Convention. In 2010, the EU set up a multi-annual policy cycle⁶ in order to create a greater measure of continuity for the fight against organised crime and serious international crime. Based on an in-depth analysis of the major crime threats, strategic and operational plans are made and implemented. Such a policy calls for effective cooperation among law enforcement agencies (LEAs), other EU agencies, EU institutions and relevant third parties. Organised crime has been one of the priority areas since the publication of the **EU Global Strategy (2016)**⁷ **for the EU’s foreign and security policy**, where Common Security and Defence Policy (CSDP) instruments should also be more efficiently used.

3 UN General Assembly: United Nations Convention against Transnational Organized Crime and the Protocols Thereto, New York 2004, available at: <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

4 United Nations Security Council: Resolution 2482, New York 2019, available at: <http://unscr.com/en/resolutions/doc/2482>

5 Council of the European Union: Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008F0841>

6 For further details, see the Council of the European Union: EU Policy Cycle Terms of Reference, ref. 10544/2/17, Brussels 2017. Available at: <http://data.consilium.europa.eu/doc/document/ST-10544-2017-REV-2/en/pdf>

7 European Union: A Global Strategy for the European Union’s Foreign and Security Policy, Brussels 2016, available at: https://eeas.europa.eu/sites/eeas/files/eugs_review_web_0.pdf

A mini-concept on the contribution of civilian CSDP to tackle organised crime⁸ was presented to the Member States in June 2019. It highlights, in addition to the EU's support to the implementation of the Palermo Convention, the need for enhanced opportunities for cooperation with Justice and Home Affairs (JHA) actors – including, for instance, Europol – as regards the work on the Serious Organised Crime Threat Assessment (SOCTA). Further, information collection, storage and dissemination should be considered, as well as more strategic partnerships between CSDP and JHA actors in the field.

Some CSDP missions have already had years of relevant experience. The EU Rule of Law Mission in Kosovo (EULEX Kosovo established in 2008) had wide-ranging executive powers to investigate, prosecute and adjudicate war crimes as well as serious crimes and organised crimes. The EULEX mandate covered the whole criminal justice cycle all the way to penitentiary. The EU Advisory Mission (EUAM) Iraq advises on combatting OC in all forms, from cybercrime to trafficking or the destruction of cultural heritage. In Ukraine, the EU mission has advised on strategy development and on developing the SOCTA for Ukraine in cooperation with Europol, as well as advising on establishing regional inter-agency organised crime-fighting task forces. Europol staff have been deployed on a temporary basis in EUCAP Sahel Niger and EUCAP Sahel Mali missions.

CSDP mission mandates differ significantly, but the policy discussions in Brussels based on the mini-concept and the EU's support of Resolution 2482 show that organised crime will remain on the priority list of the civilian crisis management instruments in the future. Experience has shown that due to the diverse background of mission members and continuous staff rotation, a standardised approach and practical guidance for advising on organised crime matters would be useful.

Drawing from EUAM experience in Ukraine and lessons learned from other CSDP missions, this handbook covers a number of practical areas where the above-mentioned strategic guidelines can be operationalised in the field. The recommendations and tips in this handbook suggest an overview of concrete steps that a CSDP mission adviser can consider when approaching organised crime phenomena in the host country, taking into account the context and cultural specificities of each area of deployment of course. The Brussels-led mini-concept serves as food for thought, especially for those planning future missions. This handbook is not meant to be an exhaustive 'to do list' for advisors on the ground, but rather, a practical guide and food for thought when deployed to a CSDP mission where tackling organised crime is part of the mandate.

⁸ The first version of the Food for Thought and mini-concept on organized crime, SECDEFPOL document shared as LIMITE document with the Member States, ref. EEAS 9845/19, Brussels 2019.

A CSDP mission member is deployed to monitor, mentor and advise (and if necessary, train) local counterparts. This manual provides an overview of good practice in assisting authorities in the host country to identify and implement efficient strategic and tactical tools to disrupt organised crime groups (OCGs) and activities.

CSDP mission advice can range from advice on strategy and legislative processes to advice on the operational capacity building of the national structures combatting organised crime. Sharing EU best practises, while keeping in mind local specificities, is crucial. Improvements are often needed, for instance, in regard to internal regulations and standard operating procedures (SOPs) for intra-agency cooperation, as well as inter-agency cooperation on both national and international levels. Not to mention the fact that awareness raising and influencing the mind-set of the population can be stronger tools in disrupting organised crime groups than the tool of pure technical capacity building in the law enforcement agencies.

The fight against organised crime is based on four key areas: assessment of the situation, inter-agency cooperation and information exchange, combatting the financial and other incentives driving organised crime (e.g. through asset recovery and confiscation) and prevention. This handbook focuses on advising both strategic and operational levels bringing up points such as:

- strategy/public policy development
- assessment and oversight mechanisms
- delineation of competencies in fighting organised crime
- legislation analysis
- capacity building
- internal regulations and intra-agency cooperation
- inter-agency cooperation
- international cooperation

Background

The connections between transnational organised crime and state fragility, armed conflict and terrorism have become obvious over recent decades. Trafficking in arms, human beings and drugs, as well as money laundering and corruption, are all linked with state failure and spoiling peace processes. International cooperation to counter these threats is vital. In June 2016, in the Global Strategy for the European Union's Foreign and Security Policy (for short: the EU Global Strategy), High Representative Mogherini highlighted that 'in security terms, terrorism, hybrid threats and organised crime know no borders. This calls for tighter institutional links between our external action and the internal area of freedom, security and justice.'⁹ Since the publishing of the EU Global Strategy, the EU Member States have been engaged in substantial discussions on the more efficient use of the CSDP instruments, including the civilian crisis management missions, in tackling the above-mentioned threats.

In November 2016, the Member States agreed on strategic priorities in the area of security and defence: responding to external conflicts and crises, building the capacities of partners and protecting the EU and its citizens.¹⁰ In this context, on a strategic level, the EU's European External Action Service (EEAS) prepared a **Concept Paper to strengthen civilian CSDP**.¹¹ In September 2018, a Civilian Capabilities Development Plan was prepared, and in November 2018, the Member States adopted **the Civilian CSDP Compact**¹², which contained strategic guidelines for strengthening civilian CSDP as well as making several commitments. The EEAS services proceeded with the preparation of an Action Plan for Compact, a national implementation plan (NIP) for the Member States' commitments, and so-called mini-concepts, used to operationalise the thematic priorities enumerated in the Civilian CSDP Compact. The first mini-concept focused on organised crime and was shared with Member States in June 2019.¹³

The Civilian CSDP Compact strives towards a more *capable, effective, flexible, responsible* and *joined-up* civilian CSDP. In addition to capacity commitments, it reiterates the thematic security challenges that require the EU's wider response. These are linked to *irregular migration, hybrid threats, cyber security, terrorism and radicalisation, organised crime, border*

9 EU Global Strategy 2016, op. cit.

10 Council of the European Union: Council conclusions on implementing the EU Global Strategy in the area of Security and Defence, ref. 14149/16, Brussels 2016 available at: <https://www.consilium.europa.eu/media/22459/eugs-conclusions-st14149en16.pdf>

11 Council of the European Union: Strengthening civilian CSDP – concept paper, ref 8084/18, Brussels 2018.

12 Council of the European Union: Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the establishment of a Civilian CSDP Compact, ref. 14305/18, Brussels 2018, available at: <https://www.consilium.europa.eu/media/37027/st14305-en18.pdf>

13 Food for Thought and mini-concept on organized crime 2019, op. cit.

management and maritime security, as well as being linked to *preventing and countering violent extremism* and also to *the need to preserve and protect cultural heritage*.

The Compact provides political and strategic direction for the current CSDP missions and the ones to come, especially when it comes to strategic reviews and updating of current mission mandates or planning the initial ones. The mini-concepts are aimed to give more practical guidance on how to operationalise the strategic direction on the ground.

Neither the Compact nor the mini-concept defines what the EU understands as *organised crime*. In general, it is far from having been well defined. As a partial solution to the conceptual confusion surrounding the notion of organised crime, the UN Convention against Transnational Organized Crime (UNTOC) adopted a definition of a *criminal organisation* as a 'structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences in order to obtain, directly or indirectly, financial or other material benefit.'¹⁴

In the USA, the Federal Bureau of Investigation (FBI) talks about 'any group having some manner of a formalized structure and whose primary objective is to obtain money through illegal activities. Such groups maintain their position through the use of actual or threatened violence, corrupt public officials, graft, or extortion, and generally have a significant impact on the people in their locales, region, or the country as a whole.'¹⁵

Organised crime is not a new phenomenon but the understanding of the term is constantly changing. The concept was used in the USA in the early 20th century to refer to different types of activities and in a very different context to the current globalised world in which money and goods are flowing (including online 24/7 flows) and thus the threat and harm caused by organised crime is ever increasing.

The Organised crime groups are flexible often being multi-layered and multi-purpose, able to function through their illicit proceeds. Their level of 'self-awareness' as organised entities is, however, often overestimated. A traditional gang culture may underpin many groups, while others can function in very loose structures. The activities do not recognise state borders, and transnational organised crime consists of credit card fraud, cybercrime and illicit trafficking in both illicit products (e.g. narcotics) and licit products (e.g. cigarettes). OCGs can smoothly swap their activities from drug trafficking to Internet-based fraud or human trafficking due to the lower risks and leaner punishment for these crimes. There is a co-mingling

¹⁴ United Nations Convention against Transnational Organized Crime, op. cit., Art. 2(a), p. 5.

¹⁵ For example, Bjelopera J. & Finklea K.: *Organized Crime: An Evolving Challenge for U.S. Law Enforcement*, CRS Report for Congress, Washington D.C. 2010.

of illicit and licit business run by organised crime groups. Legal businesses can be owned by organised criminals, or OCGs may partner with legal entrepreneurs and invest in legal activities. Laundered money enters into conventional banking institutions.

Organised crime is a global phenomenon. The traditional investigation methods, including technological solutions as well as the whole criminal justice system and legislation, need to be constantly adapted to the evolving organised crime activities, which is already a challenge in developed states, let alone in the more fragile (post-)conflict host states and regions of CSDP missions for instance. Civilian Security Sector Reform (CSSR) as a whole in these regions can be seen in the framework of fighting organised crime. In addition, international organisations and cooperation structures often lack the lower-level operational capacities to fight ever-evolving illicit transborder activities. Donor coordination and joint efforts between local and international actors – such as the EU, the International Criminal Police Organization (INTERPOL) and the United Nations Office on Drugs and Crime (UNODC) – are key to success.

Today, as seen in the activities of the Islamic State of Iraq and Syria (ISIS) terrorist group for instance, it is clear that money laundering and terrorist financing go hand in hand. Terrorism and organised crime have little in common on an intellectual level, since the former is based on ideological, religious or political principles while the latter is based on seeking profit or sometimes power. However, one can use the methodology of the other. Terrorists will engage in common crime and organised crime to fund their operations, and organised crime may use the terrorist methodology to send messages. Furthermore, terrorists and organised criminals may cooperate.

In brief, it is common mistake to think that organised crime means the same thing in different places. Even though organised crime may benefit from a certain level of instability, as seen in the Balkans of the 1990s, the criminals seem to prefer a functioning state to a state of anarchy. Keeping a low profile, they want to be left alone when it comes to their illegal activities but to profit from state structures, investment and banking systems, and other services. The relationship between governments and organised crime can be very different. In certain countries in Africa, like Nigeria, the organised crime leaders can simultaneously be government officials, and activities such as smuggling, gambling, money laundering and drug dealing can be integrated into governmental activities. In countries where little governmental corruption exists, civil servants involved in organised crime are severely punished. In some countries the government officials tend, however, to tolerate a certain amount of organised crime for the purpose of the region's economic growth; for instance, this can happen in areas depending on tourism (which is linked with gambling, prostitution and drugs).

The EU Member States have joined forces to better understand the bigger picture and fight the serious crime and organised crime in Europe. The EU set up a four-year policy cycle to address the threats through multi-annual strategic plans as well as operational action plans. As a first step of this cycle, every four years, Europol prepares a **SOCTA**.¹⁶ Europol does not merely assess the existence and number of organised crime groups or illegal activities but also assesses the nature and extent of the phenomena and how serious the threat is. A SOCTA serves to help plan and prioritise counter-measures. Currently, the threat seems to be growing even if just looking at the increasing number of OCGs active in the EU territory. The same trend is visible in the European neighbourhood. However, very little statistical data on organised crime exists in the neighbourhood's countries, and it is hard to gain a reliable bigger picture of the state of play in the world.

The mini-concept for the contribution of civilian CSDP to tackling organised crime explored possible priorities for CSDP missions to enhance information exchange with Europol and other JHA agencies, as well as ways to strengthen cooperation with partners (the UN, the North Atlantic Treaty Organization [NATO], the Organization for Security and Co-operation in Europe [OSCE], the African Union [AU] etc.). Such documents add to the already existing Civilian Operations Commander's guidelines such as the **Operational Guidelines for Monitoring, Mentoring and Advising in Civilian CSDP Missions**.¹⁷

The guidelines and concepts from the EEAS create the necessary framework within which CSDP missions can interpret and work with each mission's operational plan (OPLAN). Understanding what monitoring, mentoring and advising (MMA) concretely means for any staff member is a useful starting point for any deployment. However, supplementary practical guidelines and checklists are useful from an operational point of view. Based on lessons learned and practices from ongoing civilian CSDP missions, especially EUAM Ukraine, this handbook focuses on everyday practice in mission work in the framework of disrupting organised crime groups. This manual is for staff members working with organised crime related matters in the field and those preparing for missions, as well as those planning and evaluating related CSDP tasks. As a hands-on manual, the handbook links strategic guidelines to the everyday challenges in the host country. In addition, this handbook takes a close look at the synergies between CSDP missions, European Commission services and European Commission-funded projects, JHA agencies and international partners.

16 For further details see, e.g. Europol: "EU Policy Cycle – Empact: Robust action to target the most pressing criminal threats", available at: <https://www.europol.europa.eu/empact>

17 European External Action Service: CivOpsCdr Operational Guidelines for Monitoring, Mentoring and Advising in Civilian CSDP Missions, ref 15272/14, Brussels 2014, available at: <https://www.statewatch.org/news/2014/nov/eu-eeas-operational-guidelines-civilian-missions-15272-14.pdf>

Section 1: Strategic advice

CSDP mission mandates differ from one mission to the next. Most civilian crisis management missions are purely advisory without executive powers giving strategic advice to the host country authorities. Some of them mention organised crime in one way or another in their task descriptions. For instance, EUAM Iraq was deployed to provide strategic advice on the implementation of the civilian aspects of the Iraqi National Security Strategy, the Security Sector Reform Strategy and on the development of National Counter-Terrorism and Organised Crime Strategies. EUAM Ukraine aims to assist the Ukrainian authorities in achieving a sustainable reform of the civilian security sector through strategic advice and practical support. The EUCAP Sahel Niger mission was established to support the capacity building of the Nigerien security actors in regard to fighting terrorism and organised crime. In one way or another, missions advise on the public policy that guides the actions of the host state authorities in the specific field of the civilian security sector. Organised crime is a complex issue and thus requires a policy response.

1.1. Strategy development and assessment

1.1.1. *The public policy process for countering organised crime*

Effective advising begins with understanding the broader political context in the host country and assessing how public policy is formed and implemented in this particular environment. An EU mission will also need to identify the stakeholders forming and implementing the policy on organised crime as well as the particular policy products, including *concepts*, *strategies*, *regulations* and *reviews*. Simplified, the process for how policy should be drafted, implemented and assessed is a cycle. Each stage of the process should result in one or several written documents.

In this context a **concept** is a way to start a broader discussion on how to approach a particular issue or problem. It is usually proposed by 'policy sponsors' who advocate establishing general principles for a specific public policy. Such non-governmental initiators can include the mission itself, other international donors, non-governmental organisations (NGOs), activists and academic actors. Members of parliament can also prepare political concepts. A concept is a short document of 4–5 pages and serves as a 'skeleton' for a future strategy.

In this context, a **strategy** is a formal document, prepared on the government level and adopted in line with the administrative requirements of the host country, sometimes acquiring a status of a law. Thus, a strategy is discussed among policy makers, government representatives from line ministries and other relevant ministries, and among agencies as well as political actors. An action plan or a roadmap for how to proceed can supplement a strategy. On the level of the line ministry, these can also be called *programmes*.

Regulations of individual law enforcement agencies that are responsible for implementing the Strategy are mostly under the managerial responsibilities of respective law enforcement agencies or regulatory agencies (such as the host country's National Bank). Also organisational strategies and working plans are prepared on the level of the agency.

A **review** of the status of the implementation of a strategy and the follow-up recommendations should feed into the next cycle of formulating strategy.

Recommendations for advising on strategy development:

- ✓ Plan the work through the above-mentioned four stages of the policy process, ranging from preparing a concept all the way through to the review of the implementation.
- ✓ Identify the main stakeholders in all four stages: identify institutions and names and establish contact with the key counterparts.
- ✓ Break down the factors impacting on the public policy on organised crime (identify the problems).
- ✓ Research how these factors were addressed before: what worked or did not work?
- ✓ Together with the key counterparts, formulate ideas for a policy response (identify possible solutions). Once there is common understanding of the problem, the adviser can share his or her experience and knowledge on the particular matter.
- ✓ Discuss the process and give advice on the process, and if necessary, facilitate dialogue between the main stakeholders to support inclusive strategy drafting.
- ✓ The development of a strategy and related action plan needs to be led by the counterpart to ensure local ownership of the final planned measures on how to address the identified problems.
- ✓ Pay attention that the strategy is in line and compatible with other government policies, including the police development plan and the mission's objectives.

The process of strategy development is illustrated by the two cases below: Mexico and Serbia. The differences in socio-economic conditions and criminal patterns in these countries have led to different policy approaches in their national strategies. For each identified problem, this table provides an analysis of how it has been tackled in the strategy. As a lesson, the Serbian strategy provides clear deadlines for drafting the implementation of an action plan ('within six months after the strategy's approval') and lists the main elements that it should consist of. Such a setup creates continuity in the policy process and serves as an example of good practice. Another useful lesson learned is that by following the advice of the OSCE advisers, cooperation with civil society actors was included in the implementation measures of the Serbian strategy.¹⁸

An example from Mexico: From the policy against Organised Crime (2008) to the National Security Strategy (2019)¹⁹

Factors impacting policy	The effect on strategy development
1. The political system is decentralised during the democratic transition in a federal system	The lack of consensus and coordination on shared goals among stakeholders in terms of key threats creates obstacles for long-term plans
2. The security of the communities is undermined by rampant street violence and gang homicides	Rampant street violence has blurred the link between national security and ensuring public safety, with the latter receiving more attention. The security budget was doubled from 2006 to 2012
3. The level of corruption in the chains of the criminal justice system is very high	The problem is addressed by increased reliance on federal armed forces conducting big operations against organised crime in regions, which in turn has intensified competition between the army and federal police
4. Key OC actors: drug cartels. Before 2008: corporate-style organisations; after 2008: mafia-type organisations. Their modus operandi is violence	To respond to this structure, the government pursued the strategy of cartel decapitation (i.e. killing or arresting the leaders of drug cartels). This triggered the splitting of cartels into smaller entities and violent conflicts among them
5. The territorial scope of the OC activity: a national and regional scope (in Central America) with Ciudad Juárez remaining worst affected	The strategy did not incorporate specific regional elements
6. The recruitment activity of OCGs shifted to young members of street gangs. There is a lack of reliable data on the details of the processes of involving at-risk groups Criminal organisations also recruit both military and police officers	The government launched big social programmes targeting the poorest groups of the population, but their effect on decreasing gang violence is unclear Salaries for police officers were increased and polygraph tests were introduced to better screen new staff
7. The main illicit market is for drugs, which produces large amount of cash	Law enforcement has failed to use intelligence on real estate and financial assets (e.g. to ensure confiscation) as a tool to discourage OC leaders from using violence
8. The ideology of OCGs is distributive, which gives them some degree of popular legitimacy	The strategy does not offer sufficient steps for strengthening public awareness and resistance to OC

18 OSCE Mission to Serbia: "OSCE Mission to Serbia supports regional co-operation in combating organized crime", Belgrade 2009, available at: <https://www.osce.org/serbia/57767>

19 For more on this topic, see Guerrero E.: "Towards a transformation of Mexico's security strategy", *The RUSI Journal*, 158:3, 2013, p. 6–12.

An example from Serbia: The strategy for fighting Organised Crime (2009)²⁰ developed by the Ministry of Interior with support from the OSCE

Factors impacting policy	The response envisaged in the strategy
1. The political system is quite centralised	To identify a clear list of ministries (interior, justice, finances) and LEAs responsible for fighting OC
2. The security context is impacted on by recent armed conflict	The strategy will pay particular attention to the criminal threats present in Kosovo
3. Corruption in the chains of the criminal justice system is rather high	To emphasise the element of prevention in the activity of responsible criminal-justice agencies
4. The prevailing model of OC is state capture, with a linkage between oligarchs and OCGs	The strategy does not respond to the threat of collusion between state authorities and groups infiltrating legitimate sectors of the economy
5. The territorial scope of OCGs has a significant transnational element (involving several EU states)	To see approximation and adaptation of the legal framework on the definition of OC in domestic legislation; transnational cooperation is given priority
6. The main illicit markets are: heroin and traffic in human beings and firearms	The strategy does not provide specific details on countering threats from different illicit markets
7. The ideology of OC is based on the history of 'strategic necessity' (i.e. replacing public services)	The strategy grants a role to civil society in monitoring and supporting its implementation

1.1.2. Assessing the implementation of public policy on organised crime

Having established a relationship based on trust and respect with the counterparts, a CSDP mission adviser remains to **monitor, mentor and advise** on the problems of implementation if they occur. However, the responsibility of the implementation of the strategy and action plan remain with the local counterparts. The focus should be on weaknesses and gaps that can be addressed through further advice.

In general, the assessment of implementation should be based on the objectives outlined by the host country in its strategy or concept. However, a frequent difficulty with strategies on organised crime, especially in developing countries, is that they usually lack a clear description of the expected long-term results. Advisors can help their counterparts develop more result-based indicators with which to assess the implementation, shifting the focus from activities to outputs, outcomes and the impact of the planned measures. In addition, the results of the monitoring will feed into the assessment of the mission's mandate implementation and benchmarking (the Mission Implementation Plan and Six-Monthly Reports).

20 The official document НАЦИОНАЛНУ СТРАТЕГИЈУ ЗА БОРБУ ПРОТИВ ОРГАНИЗОВАНОГ КРИМИНАЛА, Belgrade 2009 is available (in Serbian) at the web-site of Ministry of Interior of the Republic of Serbia: http://www.rsjp.gov.rs/malodrvo/bazastrategija/2_javna_bezbednost/2_9_nacionalna_strategija_za_borbu_protiv_organizovanog_kriminala/2.9_nacionalna_strategija_za_borbu_protiv_organizovanog_kriminala.pdf

Output indicators help us assess the adequacy of the organisational decisions made to achieve the outlined policy objectives. We use these indicators to answer the question of what the country has *done* to achieve the goals in its strategy. Furthermore, **outcome indicators** are useful when evaluating the effectiveness of these decisions in the broader environment of the beneficiary country. We rely on such indicators to answer the questions of what has really *changed* in the country and if the *right measures* have been taken to achieve the goals.

An example from Ukraine: Possible indicators used to assess the implementation of the national strategy²¹ against 10 goals declared in the national concept (2011–2017)

Goals declared in the 2011 concept of public policy on organised crime	Output indicators, as of 2017	Outcome indicators, as of 2017	Diagnostics: the failure in implementation
1. Optimisation of the structure and staffing of special units	A specialised unit within the national police was dissolved and only recreated in 2018	A decrease in the detection of offences committed by OCGs	The lack of managerial buy-in at the Ministry of Interior
2. Delineation of the functions of LEAs and other state agencies in regard to OC	An increase in the number of LEAs responsible for countering OC	Investigations are disrupted due to use of the wrong jurisdiction in several cases	No legislative changes have been adopted; a low level of inter-institutional trust
3. The development of clear criteria for assessing special units on OC	Weak internal change in assessing performance	Special units fail to recruit specialised human resources	Poor managerial practices in performance evaluation; a lack of internal guidelines
4. The improvement of information systems (internal ICT systems)	The loss of the previous databases; the inability to process relevant data	An undermined capacity to detect and dissolve criminal organisations	Inefficient budgetary allocation; a lack of qualified staff to support changes
5. Strengthening international cooperation	The lack of institutional capacity to cooperate with int, partners/orgs	No joint investigation teams are established on mafia-type organisations with other jurisdictions	The late adoption of operational agreements and poor skills of staff
6. Scientific research is required for countering OC	There are no specialised state-funded research programmes on OC	Research findings are not implemented in strategic planning	The lack of designated project funding; the low level of applying research to practice
7. The improvement of the professional training of special unit employees	Staff in the national police have been 'de-specialised'	A limited number of complex cases (e.g. money laundering) are under investigation	No specialised training curricula in line with international models
8. Information sharing; organisational and financial support for agencies countering OC	No ensured allocation of budgetary funds for OC units	The poor exchange of information and resources in operational matters	Deficient procedures for financial planning; the lack of external oversight over budgetary spending
9. A forecast of criminological trends; assessment of the OC threat	The methodology for assessment has been drafted by key LEAs	No national assessment is in place	Poor capacities for quantitative research and forecasting methodologies
10. Material and financial support for specialised OC units	Outdated planning and procurement systems	Insufficient coverage of basic material needs	Non-transparent procedures for budget allocation within the police

21 Government of Ukraine: *National Strategy of Ukraine against Organised Crime*, government-approved non-published draft version as of August 2019 (in the signing process at the time of writing).

The table above serves as a useful ‘skeleton’ for drafting a three- to four-page analytical document outlining the key gaps in strategic documents on organised crime and serves to propose relevant donor activities and/or advice. In cases of perceived weaknesses, it is also useful to ask whether the goals set in the concept were realistic and well defined. In fact, none of the goals listed in the example concept from Ukraine meet the criteria of **SMART goals** (specific, measurable, achievable, relevant and time-bound goals). Flaws need to be flagged to the counterparts so that they can be eliminated at the next stage of strategy drafting.

Tips for communicating the results of the assessment to the partners:

- ✓ Discuss the findings, including the revealed weaknesses, and find common ground with the counterparts.
- ✓ Check and advise on what type of data can be realistically collected, and based on that, define which output and outcome indicators should be measured and analysed to assess the delivery of the defined strategic objectives.
- ✓ Discuss which other national stakeholders can be involved in the review process of the strategic document and what expertise could be involved from international donors.
- ✓ Facilitate dialogue, if necessary, between the key stakeholders.

1.1.3. Oversight and review mechanisms

There are a number of tools for ensuring oversight over the implementation of the public policy on organised crime, most importantly: parliamentary oversight; international review mechanisms, particularly through the UN; and civil-society initiatives.

Relevant **parliamentary bodies** responsible for oversight may include:

- parliamentary committees, either permanent or temporary
- advisory bodies attached to legislature that conduct policy analysis
- individual members of parliament whose agenda focuses on OC

There is no 'catch-all model' for establishing an oversight body on organised crime. While some nations have specific committees focusing on security or law enforcement, others may not have such committees in their legislatures. As the case below illustrates, it is possible for a parliamentary committee with a different mandate to take on the elements of legislative oversight related to the enforcement of organised crime legislation. Such a model can initially be a response to a narrow issue, but such a structure should function as a transitional stage moving towards a designated oversight body.

An example from Georgia

In 2009, Georgia passed a draft law on organised crime and racketeering which introduced two new legal terms: 'thief-in-law' (the highest leader of a criminal group) and the 'thieves' world' (a criminal community). Thief-in-law is a widely used concept in post-Soviet space and a direct translation from the Russian words *vory v zakone*, a term for a powerful and high-ranking criminal in an illegal structure. Georgian law envisages that thieves-in-law are subject to punishment regardless of whether they have committed any specific criminal offences just as they lead criminal structures. In a criminal context, a thief-in-law has to admit to his or her leadership role in order to retain authority. Moreover, the law allows the property acquired by them to be confiscated. Such broad powers for law enforcement were supposed to counter the deeply ingrained threat of organised crime in Georgia, but they also posed a question regarding the proper oversight over the legality of these capabilities.

In 2013, the Georgian Parliament set up a Justice Committee Working Group to exercise oversight of law enforcement's investigative measures. For instance, the committee is authorised to examine the legal grounds and technical capacities for wiretapping in Georgia, in particular to assess how mobile-phone companies and Internet providers submit data to LEAs.

While involving parliamentary institutions in policy oversight is important for strengthening the legitimacy of these efforts, there are certain risks. In countries with endemic corruption within political elites, chances are that parliamentary contacts may be linked to organised crime groups. It is obvious that engaging with such counterparts will not only be futile in attempting to strengthen legislative provisions on controlling criminal assets but – perhaps more importantly – will also create significant political risks for the mission in the long term. Suspicion of criminal linkages is not a reason not to communicate with local counterparts but the doubts need to be discussed with the chain of command and mission leadership.

As for the **international dimension of policy oversight**, the instrument that is applicable to most countries is the review process of the UN Convention on Transnational Organized Crime (UNTOC; also known as the Palermo Convention). The UN adopted a formal mechanism²² for reviewing the implementation of the UNTOC in October 2018. The self-assessment questionnaires and guidelines for conducting the country reviews and a blueprint for the lists of observations are being prepared in 2019.²³ Each state party will appoint a focal point to coordinate its participation in the review. The draft questionnaires for the review of the implementation of the UN convention can also be helpful for CSDP missions.²⁴

The UNTOC review mechanism contains no requirements for input from civil society. Therefore, it is up to individual states to introduce such mechanisms for reporting on OC and having a policy review for OC. To compensate for this lack of mandatory requirements at the level of UN guidelines, some non-governmental and expert-driven projects have started to emerge. For example, the Global Initiative for Transnational Organised Crime launched a project called UNTOC Watch, which is supposed to monitor how the UN is responding to organised crime.²⁵

Civil society organisations (CSOs) are useful as they are able to provide solid local expertise on OC as well as boost the publicity of the reform process influencing the public opinion and attitudes. Insights from civil society serve to verify and double-check information from the official sources. While recognising the importance of engaging with CSOs, it is also important to keep in mind the risk of getting involved with an organisation that works as a ‘front’ for an organised criminal group. Similarly, **media and investigative journalists** can serve as watchdogs for government policies. A mission’s media monitoring works as a useful tool for following events in the host country. Information can also be found in the international media as well as through the more organised crime focused media sources. Being wary of fake news, disinformation and propaganda is one thing, but understanding the level of the media freedom in the host country is also important. In many countries, journalists face threats ranging from intimidation and imprisonment to attacks and physical violence (see also Section 2.3.4).

22 For further details, see United Nations: *Resolution 9/1 of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime on the Establishment of the Mechanism for the Review of the Implementation of the UNTOC*, 2018, available at: https://www.unodc.org/documents/treaties/UNTOC/COP/Session_9/CTOC_COP_2018_L4/V1807150.pdf

23 Related documentation to the implementation of the above-mentioned Resolution 9/1 are available at the UNODC website at: https://www.unodc.org/unodc/en/treaties/CTOC/open-ended-intergovernmental-expert-group-established-by-res-9_1.html

24 The official website of the review mechanism is at: <https://www.unodc.org/unodc/en/organized-crime/intro/review-mechanism-untoc.html>

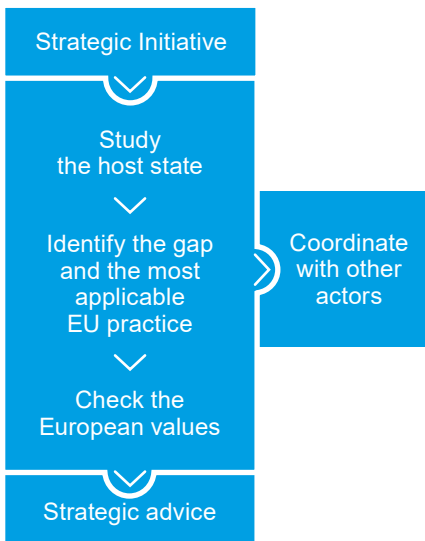
25 See more details at: <https://globalinitiative.net/un-toc-watch/>

Recommendations:

- ✓ Identify which of the oversight mechanisms are available according to local legislation and political traditions.
- ✓ Ascertain whether the UNTOC review mechanism is applicable to your host country; if yes, review the latest peer report.
- ✓ Explore whether parliamentary oversight mechanisms are applied in a formalistic way without clear outcomes or in an efficient way with proper visibility.
- ✓ Look into the role of CSOs in shaping and overseeing public policy on organised crime.
- ✓ Find out about the media landscape in your host country; which sources are reliable?

1.2. Delineation and the institutional setup

1.2.1. From an initiative to strategic advice



Organised crime poses a significant danger to young, emerging, unstable and fragile states, especially during a post-conflict period when the host state's institutions, including the government, are particularly vulnerable to infiltration and corruption. Using links to high ranking officials, Organised Crime is capable of undermining fragile states, societies and governments, which has dire consequences. Thus, any initiative targeting organised crime can put the mission in delicate situation.

While preparing advisory priorities, an assessment of the **state of play in the host state** needs to be carried out. The adviser needs an overview of the related local laws, regulations, organisational structures and key stakeholders in order to be aware of the political, economic, social and cultural environment and of sensitivities. In addition, he or she needs to understand the political interest and power games of individuals, groups and fractions.²⁶

An adviser will need to focus on **gaps and areas of possible improvement** and also on reforms in order to prepare further advice based on his or her experience and the most suitable **EU best practices**.

Tips for activities to do prior to defining a mission's strategic advice:

- ✔ Study at least three different models of EU countries as no EU model can be simply taken as an 'off-the-shelf' option and any model has to be adjusted to the realities of the host country. An adviser is expected to keep in mind that that his or her home country model is not necessarily the most suitable model to be the basis for reform.
- ✔ Test the idea: discuss the idea with the local beneficiaries and stakeholders, including the non-governmental sector and international partners (CSOs, academia etc.).
- ✔ Double check that the proposed strategic reform can be locally owned and will be sustainable, and that sufficient resources can be made available for its implementation.
- ✔ Objectively assess (i.e. assess the strengths, weaknesses, opportunities, threats) the chosen model and compare it with the existing host state model in order to measure the realistic improvement possibilities and to identify arguments in favour of the suggested improvements.

²⁶ CivOpsCdr Operational Guidelines for Monitoring, Mentoring and Advising in Civilian CSDP Missions, 2014, op. cit.

Lesson from EUAM Ukraine

Prior to proceeding with strategic advice, EUAM Ukraine developed the Organised Crime Advisory Package (OCAP) as a basis for discussions with the local counterparts. This internal document included in-depth analysis of the current Ukrainian system and provided suggestions, which covered both political/strategic and operational/tactical levels. It also included a number of case studies of EU Member States in order to provide ideas and best practices to be implemented in the Ukrainian context. After the OCAP was discussed and accepted by the local counterparts as a basis for further work, a complex implementation phase was initiated, including strategy and action plan drafting.

The adviser needs to always check that the proposed strategic initiative is based on **European values**, especially with regard to respect for human rights, equality (including gender equality), dignity, freedom, democracy and the rule of law.²⁷

A CSDP mission will not be the only international actor providing the assistance to the host state. Due to this, the adviser should firstly identify all the possible international actors that are active in the area of combating organised crime, and then ensure that **sufficient coordination and cooperation** is present in order to:

- **avoid miscommunication, providing contradicting advice, overlapping, duplication of activities and competition** (a CSDP mission, when advocating legal changes for instance, will need to be aware of other donors advice on the same law)
- **identify synergies, support each other within the international community and build up political weight on reforms** (often the objectives of the international stakeholders coincide and joint pressure can be exercised on the host state officials – such a shared objective can be, for instance, to achieve a National Organised Crime Threat Assessment)
- **prevent donor-shopping and attempts by beneficiaries to manipulate the relations** between international stakeholders (often the EU, requesting difficult political reforms, is not as attractive a partner as those donors providing technical support with no strings attached; however, close coordination with international partners will ensure that counterparts know that the international community is aware of other community member's support to the host country)

All CSDP missions have a section in charge of coordination and cooperation with international partners. This section will provide information of all the relevant coordination platforms and key stakeholders. (See also Section 2.4.3.)

²⁷ European Union: Consolidated version of the Treaty on European Union, 2012, Article 2, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M002>

1.2.2 Political buy-in and the way forward



In order to support implementation, it is beneficial to identify a **relevant driver for reform**, a motivated host state official who will personally own the reform process. This driver for reform has to have significant powers, competence and responsibilities for the implementation of a specific reform related to disrupting crime organisations. Determining which institution the driver for reform should represent depends on the host state structures and decision-making processes. Who has the power to initiate change or push for changes in these structures? It is important to understand, which structures are key to influencing state policies in the field of combatting organised crime in order to identify the key interlocutors.

Position	Competence
<i>Head of state</i>	<p>The competencies of the heads of state in the field of the rule of law vary significantly from one constitution to another. These competencies may include:</p> <ul style="list-style-type: none"> • signing off legal acts • initiating and/or approving the state policy in the area of combating OC • influencing or setting the political agenda, including ensuring that OC is considered among the priorities <p>In many cases, a head of state can lead a national security council or another authority responsible for national security that may (or may not) also have competencies in regard to combatting transnational organised crime.</p>
<i>Government</i>	<ul style="list-style-type: none"> • implementing the national security strategy, the government (executive) plays a key role in the context of elimination/reduction of the threat of OC by ensuring the necessary actions are taken • ensuring that strategic planning documents are properly funded and implemented, and that long-term OC fighting programme provisions are included • reporting on OC, particularly regarding actions taken to parliament as an integral part of an annual report • adopting strategic and operational development plans drafted by and for the LEAs combating OC • restructuring the LEAs and establishing new institutions if needed to enhance the OC-fighting capabilities and capacities • approving the nomination of top management of LEAs, a process commonly performed by government together with parliament
<i>Parliament</i>	<ul style="list-style-type: none"> • ratifying international treaties related to OC (more on this in Section 1.3) • drafting national security strategy, wherein parliament foresees the OC threats and the measures to counter it • possibly drafting or participating in drafting strategy on OC and a relevant action plan if OC is perceived as a significant threat by the host country authorities • drafting and adopting laws and specialised laws (e.g. on combating OC, on asset recovery, on non-conviction-based confiscation) since parliament, as a legislative body, can ensure that additional instruments for combating OC can be envisaged • ensuring parliamentary oversight, which besides other duties, includes supervision, monitoring of laws, controlling the government on actions taken to combat OC, and approving their related annual programme and budget • special committees can be established by parliament in order to assist the parliamentary control, such as committees responsible for OC issues

In case a driver for reform cannot be identified (e.g. due to inter-institutional rivalries in the host state), advisory work should continue with officials who have the right level of credibility, public trust and integrity. The common functions and roles of host state authorities in relation to organised crime that are listed above will guide the detection of up-to-the-task reform drivers.



After the reform, after initiatives have been conceptualised into strategic advice and after the most appropriate driver for reform is identified, there is a need to make sure that there is **political will (buy-in)** since only then is there a likelihood that the relevant reforms will be implemented and locally owned.

Tips on how to determine if buy-in is present:

- ✓ The driver for reform has confidence in the proposed reforms and perceives the changes as beneficial and necessary for the host country.
- ✓ The adviser is positively welcomed as part of the process and is confident that the driver for reform is up to the task, has sufficient competence and has enough influence to push through the needed changes.
- ✓ With a view to ensure the sustainability of the course on reforms, the identified driver for reform is ready to put the commitments on paper (in a memorandum of understanding, project implementation plan, roadmap or similar).

Buy-in is not present if there are objective reasons to believe that the driver for reform is using the process as a tool for gaining power for personal profit and misuse since this might sabotage the whole reform process and discredit the EU in general and the related CSDP mission in particular.

The risks of proceeding without political will and high-level backing may include negative consequences, such as:

- leadership of the organised crime-fighting structure (OCFS) might be dismissed and replaced with corrupt leadership
- the organised crime-fighting structure becomes a criminal organisation itself or serves as a puppet agency for corrupt state officials
- an organised crime strategy is only drafted on paper and not implemented
- the adaptation of international conventions remains forever pending ratification in parliament

Sometimes it might appear obvious for the adviser that the host state has significant issues with organised crime and that a particular reform is essential. However, the reaction of the host state officials and authorities, for various reasons, may be the opposite. They may be in denial or voice a differing opinion to the international assessment; for example, they may state that the situation is under control or that no substantial reform is needed.

It is not difficult for the adviser to understand that buy-in is not present when the reform is simply rejected. However, since in most cases the host state officials want to keep good 'face' in front of international actors, the rejections can be expressed in more subtle ways: the host state officials may pretend to be too busy to host a meeting or to reply to official requests/ letters, or the reform implementation process may take much longer than expected. So, if even the simple activities are being halted, postponed and the adviser is being ignored, this may indicate the lack of buy-in.

The most common challenges and possible solutions in order to ensure buy-in:

- strategic advice is not applicable: check the quality of the overall process (Section 1.2.1.)
- strategic advice was not properly introduced: the lack of buy-in may be due to the lack of convincing arguments and advice or simply translation has led to misunderstandings
- the election period: in cases where drivers for reform are politicians, it is advisable to check the election schedule in order to evaluate the level of commitment and the chance of receiving the same support for a specific reform both prior to and after the election process
- the driver for reform is afraid of sabotaging his or her political career: some host state officials believe that acknowledgment of organised crime issues is a career risk since revealing the extent of the problem may lead to questioning why the politicians/government have/has not done anything about it before
- spoilers (i.e. actors that actively oppose the proposed reforms) undermine the reform process on different levels by various means including non-cooperation and manipulation of public opinion: it is important to identify the spoilers and understand their motives (ranging from political to economic interests) in order to be able to find countermeasures
- the host state is already working on a similar reform with a different international actor: it might happen that some areas of reforms are already 'occupied' by other international actors, so there is a need to communicate and coordinate the reform process with all international donors in order to speak in one voice (see Section 1.2.1. and 2.4.3.)
- hybrid threats: organised crime can be used as a tool for hybrid warfare in order to keep the host state in chaos or discredit government agencies, and thus recommendations are to be closely coordinated with relevant international actors
- the driver for reform may not be able to comprehend how the reform will be concretely implemented in the host state: several ways exist for the implementation of strategic organised crime reforms, the two most common approaches are the bottom-up and top-down approaches

The bottom-up approach: In cases when it is complicated to immediately implement a strategic initiative countrywide, it is advisable to start with small-scale regional pilot initiatives. Especially when there is a need to prove the efficiency of the initiative and minimise the risks of failure, pilot projects are useful. Also, in countries with a big population or territory, a smaller-scale initiative can pave the way for larger reform. In such a case, the target region (e.g. a municipality or police unit) should be chosen carefully, including basing selection on the level of motivation and professionalism. Local ownership is of crucial importance for successful results as well as for further roll-out of the reform. In all cases, for the pilot to have a future and for the process to be sustainable, the actions should be coordinated and approved by the central authority.

Example: It is much easier to develop first the regional SOCTA than a country-wide SOCTA, since the volume of information will be smaller. At the same time, a regional version will build appetite and provide the possibility to test the methodology in order to later proceed with a national SOCTA. However, this approach has its disadvantages as it may significantly delay the overall relevant reform processes by years.

The top-down approach: When buy-in is already ensured and the reform initiative has a strong driver at the central level, it is more common to proceed from the top to the bottom. The disadvantage of such a choice is the uncertainty about whether the reform will be efficient 'on the ground'. Problems may arise due to the differences between strategic and tactical tasks as well as due to local, cultural, geographical and environmental differences between the central level and the regions. Moreover, if improperly communicated to staff members 'on the ground', this could lead to non-acceptance of the initiative or even sabotaging of it.

Example: A new organised crime fighting structure is created at a central level: only when it is fully operational in the capital are the relevant standardised units, mirroring the central level, created in the regions according to their specifics (a big port, an airport, a border, the level of infrastructure development etc.).

Checklist on political buy-in:

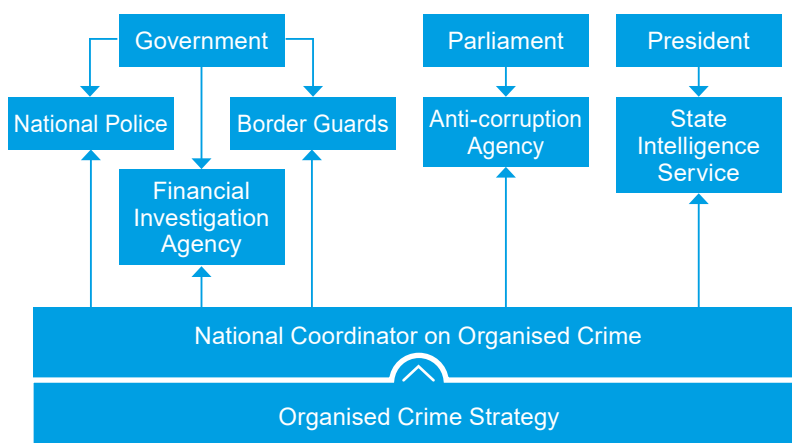
- ✓ Is there local political and institutional buy-in for the reform?
- ✓ Is there a particular driver for the reform and how was she or he identified?
- ✓ What are the risks of proceeding without buy-in?
- ✓ What are the reasons and solutions for a lack of buy-in? What kind of contingency plans could be proposed?

1.2.3 A national coordinator of anti-organised crime activities

Establishing or authorising a certain institution to act as a single **national coordinator** (NC) on the strategic level, responsible for organising, coordinating, monitoring and reporting on the implementation of policies and activities related to organised crime enforcement, can serve as an effective agent of change, ensuring reform implementation and sustainability in cases when:

- a) several LEAs are involved in the area of combating organised crime
- b) no specifically authorised LEA or governmental body/agency is defined that would be empowered to direct other agencies to tackle criminal organisations
- c) there are potential gaps in coverage, inconsistency in performance and duplication of efforts of several LEAs in combating organised crime
- d) the measures foreseen in the strategic/political documents are needed to be interconnected with reassurance of their implementation through maximal inter-agency cooperation and coordination. This is sometimes lacking due to the various barriers, real and perceived, especially when the communication and coordination is based on informal agreements between LEAs
- e) the sustainability of reforms should be ensured

The advantage of a national coordinator is that, in most cases, the structure is not heavily politicised, which ensures a more sustainable process for implementing the reforms for years to come. An NC would thus lead the drafting of an organised crime strategy and supervising the implementation of action plans. The NC would need to have the authority to directly coordinate and/or task relevant LEAs when it comes to implementation of the measures defined in the strategic documents.



There are several options for the establishment and composition of an NC:

Type of NC	Advantages	Disadvantages
An inter-agency working group which consists of the senior management of LEAs taking part in combating organised crime	<ul style="list-style-type: none"> ➤ it can be easily established as no legislative amendments are required ➤ the NC does not get additional powers as all members of it already have sufficient powers for implementing all the relevant decisions of the in areas of their responsibility ➤ the direct coordination of units in the field (on strategic to tactical levels) ➤ LEAs are interested to join the NC due to the possibility of sharing resources ➤ the better management of available resources 	<ul style="list-style-type: none"> ➤ no additional powers are delegated ➤ the NC depends on the good will of the LEAs taking part in it ➤ competition between the different LEAs could be an obstacle for effective cooperation
A new special authority becomes the NC	<ul style="list-style-type: none"> ➤ a focus on organised crime ➤ specialisation ➤ no competition ➤ there is one centre in which decisions are made ➤ additional powers might be delegated ➤ institutional memory is reassured 	<ul style="list-style-type: none"> ➤ amendments to the legislative framework are required ➤ there are difficulties in reaching tactical/operational levels ➤ it is time-consuming to establish ➤ the implementation of NC decisions can become stuck at the strategic level ➤ additional resources and funds are required
The nomination of an existent specialised LEA to be the NC	<ul style="list-style-type: none"> ➤ having one agency is the easiest option to manage if/when there is one major national agency in charge of combating organised crime 	<ul style="list-style-type: none"> ➤ there is limited interest from LEAs which are not part of the NC to follow the lead ➤ different subordination options might raise tensions among government agencies ➤ the resistance of competing LEAs

An inter-agency working group which consists of the heads of the LEAs taking part in combating organised crime, is considered the most effective NC model. The legal basis for the NC models can be envisaged within the specialised legal acts/laws of the host state or just be based on an inter-agency order or a memorandum of understanding between LEAs.

An example from Serbia

For the purpose of the efficient implementation of the organised crime strategy, the Government established a working body composed of representatives of the state institutions taking part in implementation of the organised crime strategy.²⁸

28 Government of Serbia: *The National Strategy for the Fight Against Organised Crime*, Official Gazette of the Republic of Serbia, No. 23, 2009.

The tasks of the NC could include the following functions:

- coordinate the development of a national SOCTA
- identify and agree (with other LEAs, the government etc.) on the key organised crime-related priorities according to the assessment mentioned above
- develop the operational action plans for the implementation of the Organised Crime Strategy
- according to their functional competencies, nominate the LEAs to lead particular operational action plans related to approved priorities
- execute operational action plans jointly with other agencies to disrupt organised crime activities (preventive and repressive measures)
- ensure the commitment of LEAs for the implementation of joint plans and for the required allocation of human and financial resources
- ensure the smooth communication and cooperation between LEAs (such as sharing criminal intelligence and coordinating operations)
- prepare interim, annual and special reports on the outcomes and the results of the implementation of action plans by the government
- propose revision of the strategies in accordance with the arising needs if necessary
- monitor the organised crime situation and prepare the additional initiatives, solutions and actions for the government
- draft amendments to legislation
- involve NGOs, the business sector, municipalities and media in order to affect public attitudes; reduce the viability, financing and recruiting of organised crime; and to search for support and synergies for activities countering organised crime
- conduct a national survey with regard to organised crime

An example from Kosovo

According to the national strategy, the 'National Coordinator is an individual body, responsible to concert, coordinate, monitor and report on the implementation of policies, activities and actions related to the fight against organised crime'²⁹

²⁹ Kosovo Government: *National Strategy and Action Plan of the Republic of Kosovo Against Organised Crime for the Period of 2012–2017*, Pristina 2012.

A checklist for establishing an NC:

- ✓ Is there an authority with the functions of an NC in the host country?
- ✓ Does the host state need an NC?
- ✓ If they do, what would be the optimal composition of an NC?
- ✓ What is the required legal background for an NC to be established and to operate?
- ✓ What would be the tasks foreseen for the NC?

1.2.4 Specialised structures for combating organised crime

The international legal acts related to combating organised crime do not provide specific guidelines on the establishment of such specialised structures. Decisions on the organisation and distribution of public functions are usually considered to belong to the realm of domestic law. Nevertheless, the development and adaptation of legislation frameworks and national strategies, besides the appropriate organised crime disruption tools, may also encompass organisational arrangements, such as the creation of specialised structures for combating criminal organisations.³⁰

There are some advantages in specialised organised crime fighting structure compared to specific crime-oriented structures. Detecting, investigating and dismantling OCGs requires significant resources, is time consuming and needs close coordination and cooperation, modern equipment, advanced knowledge and experience.

If there is no specialised structure for combating organised crime in the host state, prior to proceeding with giving advice on establishing it, the adviser needs to check if the already-operational specific LEAs are capable of covering the necessary responsibilities and activities. In particular, it is advisable to compare the advantages and disadvantages of a *specialised organised crime fighting structure* compared to a *specific crime-oriented structure* in the host state. The adviser should keep in mind that crime-fighting structures might differ significantly from country to country due to specificities of the host states (historical circumstances, culture, traditions, crime-relevant factors and the environment) so the comparison table below may also look different.

³⁰ See, e.g. UNODC: *Digest of Organized Crime Cases - A Compilation of Cases with Commentaries and Lessons Learned*, New York 2012, available at: https://www.unodc.org/documents/organized-crime/EnglishDigest_Final301012_30102012.pdf

Type	Advantages	Disadvantages
Specialised organised crime fighting structure	<ul style="list-style-type: none"> the centralisation of resources it covers the whole range of the criminal activities of a criminal organisation the perception of organised crime's threat and providing a picture of how operational resources are being directed to tackle it strengthened prevention of future crime a sufficiently strong particular focus and know-how on OC the authority or levers to lead an effective national response the efficient direction of resources 	<ul style="list-style-type: none"> there may be a lack of expertise in a specific crime area it is extremely hazardous if there is corrupt management or if it is infiltrated by criminals
A specific crime-oriented structure	<ul style="list-style-type: none"> it ensures healthy competition it prevents abuse/monopoly it ensures the professionalism of prevention, detection and investigation of a particular crime area 	<ul style="list-style-type: none"> there is no approach to a criminal organisations as a whole it presents a fragmented picture of OC's threat it is only effective in cases of close cooperation and coordination with other LEAs a narrow categorised specialisation might limit the possibilities of more comprehensive investigations targeted not only at preventing the specific criminal offence but also to disrupting the whole criminal organisation organised crime has a national and transnational geographical scope of activities that requires a special capability that is too costly to be available to every force³¹

Not only police agencies fight organised crime: Organised crime is a national threat to most countries and it requires a multi-agency approach. For this reason, specialised structures should not be only foreseen within police forces but also within the host state's prosecution service and there should be specialisation in the whole criminal justice chain (in courts, penitentiary etc.) that is somewhat involved in the disruption of organised crime. The adviser should discuss issues with the local counterparts and identify all the other agencies related to the specialisation of combating organised crime in order to understand how efficient the overall system for combating the phenomena is.

31 United Kingdom National Crime Agency: *A Plan for the Creation of a National Crime-Fighting Capability*, presented at parliament by the Secretary of State for the Home Department by Command of Her Majesty, London 2011.

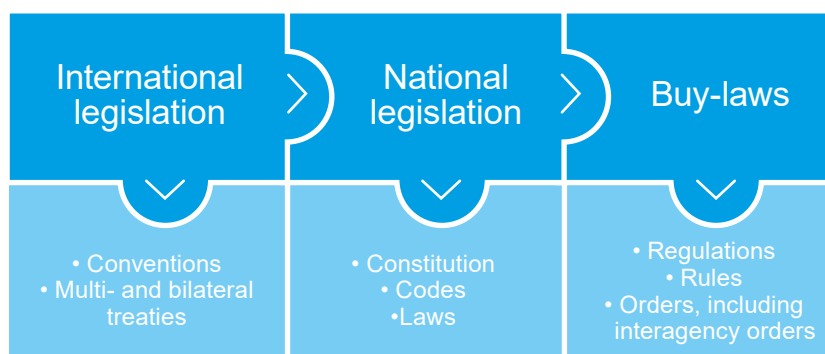
A checklist for the establishment of specialised structures for combating organised crime:

- ✓ Does the host state have a specialised organised crime fighting structure?
- ✓ If it does not exist, would the establishment of one be more effective in comparison to the present specific crime-oriented operational structures? If so, why?
- ✓ What are the other agencies which have a specific focus on organised crime?
- ✓ Do some prosecutors and judges specialise in organised crime cases?

1.3. The legal framework

A legal framework is a combination of international and national legislation, including by-laws (in the context of national legislation), which directly or indirectly influences the operation of the law enforcement system. Ideally, this framework should be clear and simple to navigate, thus ensuring that the national law enforcement system could function efficiently with a view to addressing current threats. Moreover, the framework should be flexible enough to respond to the most recent challenges and trends generated in the modern dynamic world, such as developments in the IT sphere, financial infrastructure or migration flows. At the same time, a reasonable balance should be kept between stability and adaptivity as too frequent and unsystematic changes in legislation could be frustrating for legal practitioners (police officers, prosecutors, judges) and are likely to lead to unsuccessful investigations and prosecutions.

Legislation is the backbone of any law enforcement activity. A review of the relevant legal framework in place should be the starting point for any strategic and tactical advice on organised crime. The adviser needs a profound understanding of the hosting country's legislation and legal traditions.



While the initial evaluation of the legal framework is usually confined to a simple review of the appropriate legislation in the host country, a further in-depth analysis should cover a wider range of questions, focusing on, but not limited to, the available legal instruments, applicable rules and procedures, and human rights protection.

International donors often focus on the analysis of the legal framework, followed by focussing on recommendations. Thus, it is highly advisable to go through the materials prepared by other donors (e.g. the UN, the OSCE, the Council of Europe, Twinning projects) and avoid duplication of work and the cost of translation. A CSDP mission’s coordination and cooperation section (if it exists) or political section can help to identify and contact the relevant international partners.

1.3.1. Relevant international conventions and agreements

International conventions, agreements and treaties form the international legal framework and act as a background for national legislation. Taking into account that organised crime represents a global threat, it has remained in the focus of the international community in recent decades.

A simple tool like the chart below can be developed to map out and visualise information on the international conventions and treaties adopted by the host country and help the possible assessment of implementation.

	International legal acts that particularly concern organised crime	Related areas
Essential	<p>The United Nations Convention against Transnational Organised Crime</p> <p>The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children</p> <p>The Protocol against the Smuggling of Migrants by Land, Sea and Air</p> <p>The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition</p> <p>European Convention on Mutual Assistance in Criminal Matters</p>	<p>UN Convention against Corruption</p> <p>UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances</p> <p>Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism</p> <p>Convention on Action against Trafficking in Human Beings</p>
Auxiliary	<p>Regional conventions, multi- and bilateral agreements</p>	<p>Single Convention on Narcotic Drugs</p> <p>Convention on Psychotropic Substances</p> <p>Criminal Law Convention on Corruption</p> <p>Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime</p>

The first column contains only those international legal acts that particularly concern organised crime, while the 'Related areas' column includes documents regulating the associated spheres. Note that the documents in the upper left box are of utmost importance for the advisory work while those in the bottom right box are of lower urgency.

Starting from the simple question, 'Has the host country ratified the international act in question?', can help build legal understanding about whether any reservations or declarations have been applied and, if so, what was the reason behind their application. Understanding the context is crucial for the correct interpretation of the legislation that is in place.

If some of the international legal acts that are considered by the advisory mission as essential for the area of combating organised crime have not been ratified by the host country, steps need to be taken in order to understand which factors (e.g. political, economic or cultural factors) prevented their ratification. This could potentially become one area for providing further advice to beneficiaries and, in some cases, an area for advocacy with political stakeholders.

The next step is to verify if the provisions of relevant international acts are embedded in the national legislation and actually implemented. A simple tool like the following chart (based on the Lithuanian example) can be developed to map out and visualise the outcomes of the analysis:

UN Convention against Corruption	Criminal Code of the Republic of Lithuania	Comment
<p><i>Article 20: Illicit enrichment</i></p> <p>Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.</p>	<p><i>Article 1891: Unjust enrichment</i></p> <p>A person who holds by the right of ownership the property whose value exceeds 500 MSLs, while being aware or having to be and likely to be aware that such property could not have been acquired with legitimate income, shall be punished by a fine or by arrest or by a custodial sentence for a term of up to four years.</p> <p>A person who takes over the property referred to in paragraph 1 of this Article from third parties shall be released from criminal liability for unjust enrichment where he gives a notice thereof to law enforcement institutions before the service of a notice of suspicion and actively cooperates in determining the origin of the property.</p> <p>A legal entity shall also be held liable for the acts provided for in this Article.</p>	<p>The illicit enrichment concept receives slightly different phrasing in Lithuanian legislation.</p> <p>A criminal offense in Lithuanian legislation is characterised with the extended element of intent ('while being aware or ...').</p> <p>The subject of the criminal offense is broader in the Lithuanian legislation as it covers not only public officials but also 'a person' in general.</p>

Moreover, it is advisable to enhance legal analysis by interviewing local practitioners (police officers, prosecutors, investigative judges, defence counsels). This will help to get a clear understanding of the transposition of certain provisions of international legal acts into national legislation and their practical application. Particular attention should be paid to recurring issues that the practitioners face so that specific advice can be tailored, including proposals for legislative changes.

1.3.2. An overview of relevant national legislation

With regard to national legislation, it is advisable to analyse the whole legislative process together with all relevant legal acts, starting from the constitution. While this may appear overwhelming and time-consuming, one may want to start by developing in further detail an understanding of the criminal justice chain of the host country as a reasonable alternative to a detailed description of all applicable legislation. The criminal justice chain³² presents a structured algorithm which covers the whole process, starting from the launch of a pre-trial investigation to the execution of a penalty.

In regard to the criminal code, specific attention should be paid to several issues which are directly related to organised crime. In particular:

- definitions for different forms of organised crime (e.g. OCG, criminal organisation, ‘thief-in-law’)
- formal criteria for the above-mentioned forms of organised crime (the number of persons, common intent etc.)
- how the punishment for committing criminal offences is influenced by the criminal being a member of an OCG



Photo by Sergii Rybchenko
*The Criminal Procedure Code,
commented on with the case law
of the European Court of Human Rights*

32 Decision points in the criminal justice process illustration available at: https://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/Decision_Points.pdf

You can see an example of analysing the structural elements according to these three points in the chart below, based on the provisions of the Criminal Code of Ukraine.

	OCG	Criminal organisation (CO)	Gang
Article/s of the Criminal Code of Ukraine	28	28, 255	257
Criteria	<p>the crime was prepared or committed by three or more persons</p> <p>the members are preliminarily organised into a stable group</p> <p>a common plan for committing a criminal offence is known to all members of the OCG</p> <p>there is a distribution of functions among OCG members</p>	<p>an organisation of five or more persons</p> <p>the organisation is stable</p> <p>the organisation is hierarchical</p> <p>the organisation was preliminarily arranged for the joint activity of committing serious crimes (with a penalty of up to 10 years of imprisonment) and the most serious crimes (with a penalty of imprisonment for more than 10 years or life)</p>	<p>armed (either an OCG or CO)</p> <p>intent to attack enterprises, institutions, organisations</p>
Punishment	Aggravating circumstances (belonging to an OCG) increase the punishment for any crime committed by the group	Establishment, management, participation or support are punishable as separate criminal offences by imprisonment for 5–12 years	Establishment or participation are punishable as a separate criminal offences by imprisonment for 5–12 years

Moreover, developed by the UNODC, the *Model Legislative Provisions against Organised Crime*³³ could be used both as a checklist for reviewing existing national legislation and as a guideline for the development of new legislative provisions. In case the prior analysis detected a lack of properly legislated provisions, it is useful to turn to the UNODC Model Law as a first step in providing strategic advice for host country authorities.

As a rule, criminal procedure codes provide for general procedural rules applicable to all investigations. Therefore, it is advisable to check whether the criminal procedure code of the host country provides for additional powers and rules with regard to organised crime. In terms of general analysis of the procedural legislation, applying the cost-benefit approach would be logical and efficient. Existing reviews and reports which cover the area of organised crime in the host country should be sought. Interviews and discussions with legal practitioners (police officers, prosecutors, judges and defence counsels), as well as with legal scholars and lawmakers, can greatly contribute to the understanding of the state of play. Having identified a number of challenges with the criminal procedure legislation, a mission will be in a position to provide a tailor-made advisory for the local counterparts.

33 UNODC: *Model Legislative Provisions against Organized Crime*, Vienna 2012, available at: https://www.unodc.org/documents/organized-crime/Publications/Model_Legislative_Provisions_UNTOC_Ebook.pdf

Apart from the criminal and criminal procedure codes, an adviser should examine the specialised legislation on combating organised crime (if any). Although such legal acts can neither establish new rules and procedures nor expand existing ones, they may play an important role in the formation of the national framework for combating organised crime, including the specific capacities and competencies of LEAs in this field, setting up a coordination authority (at the national and regional levels) and ensuring domestic and international cooperation. The specialised legislation should be in line with an international and national legal framework serving to elaborate on the relevant provisions.

Example: The specialised Law On Combating Organised Crime and Racketeering in Georgia aimed to deal with the rampant organised crime, in particular, by addressing and defining such specific issues as ‘criminal underworld’ and ‘thieves-in-law’.

In addition, it is also advisable to review auxiliary legislation, which could be relevant to the area of organised crime. This refers to different legal acts regulating issues which could be important for combating organised crime (e.g. prevention activities, intelligence gathering, witness protection, and the tracing and recovery of assets).

Recommendations:

- ✓ Map out the international legal acts ratified by the host country in the context of combating organised crime.
- ✓ Assess which provisions of international legal acts have been transposed into the national legislation and which are still lacking.
- ✓ Chart out the local criminal justice chain in order to have a basic understanding of the rules and procedures of the host country.
- ✓ Compile a list of national legislation, including by-laws, related to the area of combating organised crime, thus creating a tailored ‘law library’.
- ✓ Detect general legal instruments available for combating organised crime together with specific ones provided for by the specialised legislation.

Section 2:

Operational aspects

The operational aspects of the CSDP missions' work consist of assisting local LEAs towards increased effectiveness, sustainability and accountability. LEAs divide their tasks among specialised units, lines of operations or use other types of structural solutions. Increasing organisational complexity allows the institutions to better tailor their activities and allocate resources according to priorities. In addition to advising on a strategic approach to tackling organised crime, CSDP missions may want to look at the organisational aspects of the LEAs, their competencies, efficiency and internal regulations.

2.1. Specialised structures

2.1.1. A choice between new or enhanced structures

Specialised organisational structures for combating criminal organisations differ from one country to another. Their role is to disrupt key criminal organisations in a particular state. Led by intelligence and analysis, such structures have to be well informed about the organised crime threats in the national context in order to be able to deploy sufficient resources with maximum effect and to have the flexibility to counter such threats. In addition, these structures (normally found within police organisations) should not be vulnerable to internal pressure and/or external pressure. On the contrary, political reassurance of their intervention powers should come from the highest level of decision makers.

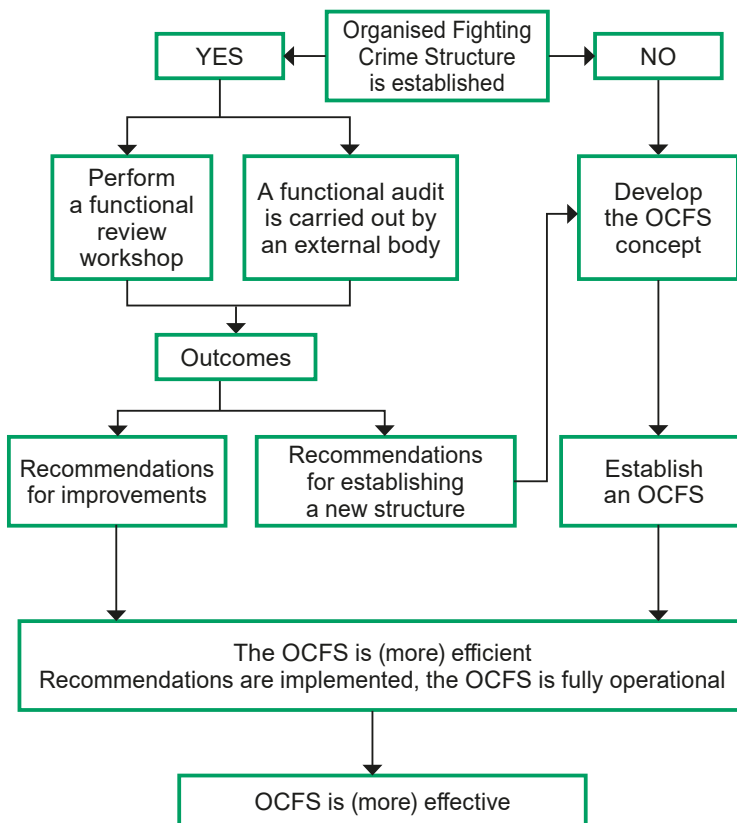
While various country-specific solutions exist and can further be tailored when establishing new structures, it is recommendable to take into account the already existing standardised methodologies (e.g. UN TOCTA³⁴ and the Europol SOCTA³⁵) in assessing the threat of criminal organisations. Those methodologies can provide hints and general principles for such structures.

If in the host state the political decision has been taken to enhance the organised crime-fighting capacities with a focus on OCGs, the following **steps could be considered for the improvement or establishment of such organised crime fighting structures (OCFSs).**

34 UNODC: United Nations Convention against Transnational Organized Crime, 2004, op. cit., Transnational Organized Crime Threat Assessment, Vienna 2010 and UNODC website <https://www.unodc.org/>

35 See Europol: "Serious and Organised Crime Threat Assessment (SOCTA) - Identifying the priorities in the fight against major crime" and European Union SOCTA report, the Hague 2017, both available at: <https://www.europol.europa.eu/socta-report>

STEP 1



STEP 2

STEP 3

STEP 4

STEP 1

Situation analysis: The starting point is to understand if any specialised structures exist. Since LEAs and police organisations might use different terms,³⁶ the adviser should look into the tasks and functions of LEAs and find the Agency with the *responsibility to disrupt key criminal organisations* (OCGs) in the host state.

A blind decision to establish a new structure, while similar functions already exist elsewhere, might lead to inefficient resource management and struggles between the newly established and already existing organised crime-fighting units. Some host countries may be eager to follow the EU’s advice and establish new structures in order to ‘show progress’ without fully analysing the capacities and functions of their current structures.

If the necessary structures exist, their functional review should be carried out in order to provide recommendations for the improvement of their efficiency.

³⁶ E.g. the Strategic Investigations Department – the OCFS within the National Police of Ukraine – does not contain *organised crime* in its name.

A lesson from Ukraine

After the Revolution of Dignity in Ukraine in 2014, due to political reasons, the specialised organised crime-fighting unit (known as 'HUBOZ' in Ukrainian) was dismantled. Nevertheless, the organised crime threat remained high and the capacities to tackle it remained insufficient.

Situation analysis

The EUAM, by analysing the capacities of HUBOZ staff transferred to other police units and LEAs, found out that organised crime-fighting capacities decreased by 70% after the dismantlement of HUBOZ. Other structures had only partially increased their capacities, and the overall situation did not improve.

An accurate picture of the organised crime situation in Ukraine was lacking. The main source of relevant information remained the official statistics of detected OCGs. Compared to the statistics in countries with similar socio-economic conditions, it appeared that 60–70% of OCGs were falling under the radar. In addition, the mission analysed the dynamics of OCG detection and noticed a major decrease in the number of detected OCGs (falling from 456 in 2011 to only 107 in 2016). A possible explanation could be that OCGs had been eliminated or that OCGs in Ukraine are larger in composition compared to elsewhere. These presumptions were dismissed, however, as only a few OCGs with more than a dozen members had been detected. The mission concluded that a major part of the picture of the OCG situation is missing.

The advice

After the mission had demonstrated the reduced organized crime-fighting capacities in Ukraine, the decision was made to provide advice on establishing a specialised unit within the National Police of Ukraine with the main task of combating organised crime.

Lessons learned

Prior to providing advice on the necessity to establish the specialised unit, EUAM Ukraine:

- analysed the available organised crime-fighting capacities
- analysed the organised crime situation and identified significant intelligence gaps by:
 - comparing the detected number of OCGs in Ukraine to EU countries with similar conditions
 - analysing the OCG detection dynamics over the years
- identified the LEA in which the OCFS should be established
- advised the decision makers on the establishment of the OCFS, reassuring them that provided advice took into account the actual situation in Ukraine and included the best EU practices
- assisted in the establishment of the specialised unit for combating organised crime, called the Strategic Investigations Department, involving 800 officers throughout the country

Such an approach, based on thorough analysis, ensured the high-level buy-in among the state leadership and police hierarchy, and provided a step-by-step approach for the reform.

STEP 2

Building up capacities: As noted earlier, there are two options available regarding how to proceed: either give advice on establishing new structures or on improving already operational structures.

A lot depends on the level of trust, openness and willingness of the host state institutions when such a specialised structure is already functioning or is planned to be established. The interventions of a CSDP mission member might be constrained by the host state's legal policies when it comes to the availability of information being limited to a 'need-to-know' basis. The level of trust of the local officials – as well as existing procedures on how to share information with the CSDP mission, especially in its initial stages – may be limited. Not all operational data should even be available for the CSDP adviser (e.g. it is not considered appropriate for an adviser to receive the personal data of crime suspects).

Timeframe: It might take a long time to make new structures fully operational or for all the recommendations to be implemented. Due to rotation within CSDP missions, one adviser cannot proceed with all the recommended steps on improving or establishing such structures, thus a proper hand-over needs to be prepared for the adviser's successor in order to ensure the coherence and sustainability of the mission's advice.

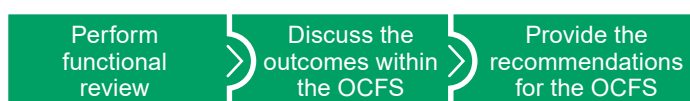
Tips for establishing a new structure:



- ✓ Analyse the current capacities and intelligence gaps.
- ✓ If a need for additional structures is identified, discuss the way forward with the local counterparts and help them draft **a concept for the new structure**, which will include an overview of all topics ranging from tasks and resources to accountability. These are described in Section 2.1.2. *as evaluation criteria*.
- ✓ Provide counterparts with clear arguments to justify why there is a need to establish such a specialised structure in the host state and use examples and best practices from the EU.
- ✓ Discuss the concept within a larger setup of local counterparts and help them reach final approval and political buy-in.
- ✓ Find out about and help ensure that the structure's human and financial resources that are planned and budgeted for are available and sufficient for building up the new infrastructure.

- ✓ Develop the concept's implementation plan with the counterparts, including a specific timeframe and a roadmap of activities that need to be accomplished in order for the new structure to be considered fully operational. The check-list of Section 2.1.2. can again be useful.
- ✓ In some cases, the CSDP mission and the beneficiary can co-sign a memorandum of understanding (a bilateral agreement); in this way the CSDP mission can foresee the further support needed for implementation of the plan by providing advice, equipment and specialised training. The beneficiary should give assurance that the agreed implementation plan is realistic within the state context and budget.

Tips to help improve already-operational organised crime-fighting capacities:



- ✓ **A functional review** should be conducted of the existing structure. This can be done using the CSDP mission staff or by contracting an external body/agency/expert to do this (for instance, with the mission's project funds). There are, however, a very limited number of external agencies capable of performing such a task since fighting organised crime is a narrow and sensitive area of expertise. In addition, the host state may have very strict rules on whom they would accept to share information with.
- ✓ The recommendations below can be used to prepare the agenda/checklist for the functional review or to serve as guidance (a basis for the terms of reference) for the external body/agency tasked to perform such a review. The scope and plan for a functional review should be discussed and agreed with the leadership of the OCFS to ensure open discussions and sharing information.
- ✓ The functional review can be performed by hosting workshops, roundtables or similar types of event together with the management of the OCFS in question and other relevant experts (e.g. the human resources officers of the police organisation) from the host state's side and subject matter experts from the CSDP mission's side. The choice of participants should depend on the specific topic. (For instance, when analysing the efficiency of the police-prosecution's cooperation, an adviser on prosecution / rule of law from the mission's side should be involved.) It is not possible to perform such a review in one day, thus the covered topics should be divided into thematic areas and relevant reviews should be accomplished gradually on a monthly basis until all the areas are covered.
- ✓ Additionally, subject matter experts from the Member States or other international actors might be invited in order to raise the level of the functional review events and ensure the holistic approach of the functional review process.

- ✔ When the functional review is ready, the outcomes and findings should be discussed with the management of the OCFS in order to identify realistic areas for improvement.
- ✔ Following these discussions, the mission will present key recommendations, depending on the practice in place, for instance by drafting an official letter from the head of mission to the respective LEA which supervises the particular OCFS, as well as to the management of this structure itself. In case of the involvement of external experts or other international actors, such a letter could be co-signed by them. (For instance, EUAM Ukraine, the United States FBI and the UK National Crime Agency experts signed a letter of recommendations to the National Police of Ukraine on increasing organised crime-fighting capacities that had much more political weight than if the EUAM had signed the letter alone.)
- ✔ The recommendations should be followed up – including being followed up by mission management – in meetings with the management of the LEA in question in order to gain commitment to their implementation.
- ✔ The mission could also ensure further support by providing advice, equipment and specialised training. Just like in the case of establishing new structures, in return the beneficiary should give assurance that the agreed recommended reforms are feasible within the state context and budget.

STEP 3

Recommendations are implemented: A new organised crime-fighting structure can be established by signing the internal order of the relevant LEA, but it does not mean that it is capable of performing any duties immediately after being established. The implementation of the concept of establishing such a structure should only be considered as accomplished when this structure is **fully operational**, that is, when it has the necessary legal basis, infrastructure and resources (including staff being recruited and trained in performing their duties).

The end state should be that the old or new structure is **efficient (or more efficient)** in its fight against organised crime. A CSDP mission should analyse its impact on the ground and the implementation of the reforms it is advising on, yet it remains challenging to continuously keep track of the progress of new structures. Similarly, it is difficult to follow up the implementation of the mission recommendations. Keeping this in mind, the mission should not fall into the trap of reporting the provision of a set of recommendations as a ‘success story’. On the contrary, the reform needs to be tracked and given the necessary time. Due to various reasons, reforms can become stuck. In this case, a CSDP mission’s role is to step in to support the implementation (e.g. by specialised training), for instance, if the counterpart does not know how to implement a certain set of recommendations (according to recommendations the host state may have agreed to develop a National Organised Crime Threat Assessment but has no knowledge of how to actually do this).

2.1.2. How to track the efficiency of the reforms

The following methodology (based on the SMART criteria) can help to track the progress and assess the level of establishing a new structure and/or the implementation of recommendations. The suggested criteria describe the OCFS's inner processes and their efficiency. The scores are only indicative but provide an example of calculating progress within a particular timeframe towards the ideal of 100% efficiency.

Criteria for measuring the efficiency of the OCFS	Part of the full score
A. Tasks and evaluation criteria	15%
B. Resource management	50%
C. Cooperation and coordination	8%
D. Regional OCFS resource management	13%
E. Legal framework and powers	7%
F. Integrity, corruption prevention and accountability	7%
Total	100%

Tips on how to use such a progress-tracking methodology:



- ✓ To **discuss the progress** with the local counterparts, including the management, a specific set of criteria to measure progress of the reforms is useful. In these discussions, counterparts are asked about the status of each area of reforms in order to find out which recommendations have been implemented and which have not.
- ✓ **Evaluating the progress** will follow discussions with the beneficiary and gathering information as the adviser can then calculate the overall progress score for each criteria.
- ✓ **The evaluation results should be discussed** with the counterparts to identify the issues which are delaying the progress and to provide assistance and advice.
- ✓ After consultations with the mission, the OCFS management is expected to **proceed with further improvements** and, after a determined time period (e.g. quarterly), another round of progress-tracking discussions and evaluation should start.

Criteria A: Tasks and evaluation criteria (15%)

Relevant questions to ask:

- What is the role of the OCFS in the organised crime strategy implementation?
- Does the OCFS have a clear understanding of the organised crime in the host state?
- Is the organised crime situation reflected in the OCFS's priority setting? If so, how?
- Is the OCFS able to compare the threat level of different OCGs and prioritise its work?
- What are the tools used to monitor the OCFS actions and impact on a particular OCG?
- Based on which criteria is the OCFS's performance evaluated within the LEA/state?

Strategic role (3%): This specialised structure is supposed to have a major role in preparing and implementing the host state's strategy on combating organized crime (or an analogical document in relevant areas) and action plans. The OCFS could also have an important role in the composition of the NC against organised crime.

Strategic tasks and planning (4%): The OCFS strategic objectives should be related to the priorities set up in the organised crime strategy or other strategic documents. Respectfully, the OCFS has to develop and maintain a comprehensive picture of organised crime threats and risks in the host state (e.g. develop a SOCTA report or a similar product) as well as to ensure a prioritised response (short-term and long-term plans).

Tactical tasks and planning (4%): A methodology for evaluating the particular OCG threat level should be developed for better resource management and for monitoring the OCFS's impact on the OCG threat dynamics. In addition, a minimum OCG threat-level score could be agreed, which would serve as the bottom line for the OCFS to become engaged so as not to waste resources on low-threat-level OCGs.

Efficiency evaluation criteria (4%): The evaluation of the OCFS's performance based on statistics of solved crimes or the 'gut feeling' of the management should be replaced by a clear performance evaluation system based on the needs on the ground and criteria used in EU countries. Such criteria evaluate the organisation as a whole rather than evaluating an individual officer, and they focus on the progress of the OCFS in reducing the harm and threat of the organised crime phenomena in the host state.

Criteria B: Resource management (overall: 50%)

Human resources (23%):

- How is the OCFS placed in the structure of the LEA?
- What is the reporting chain of this structure?
- What is the decision-making process like?
- Which specialised support units are essential for the OCFS's effective functioning?
- Is there a need for specialisation of the OCFS staff members?
- Is this structure of an adequate/satisfactory size?
- What external resources could the OCFS receive and how?

The OCFS's organigram, position, chain of command and management (7%): The OCFS can be adequately placed within a LEA (mainly a police organisation) or established as a separate authority. The OCFS needs an organisational chart with clear responsibilities for all structural units in order to ensure effective task allocation, coordination and supervision, which in turn guarantee the achievement of organisational aims. The head of the OCFS preferably reports directly to the head of the LEA in question (or the deputy supervising the criminal police) and has an adequate number of deputies with clear functional responsibilities properly delineated. The main goal is decreasing bureaucracy in the decision-making process and making it efficient. Possible gaps in managerial control have to be assessed and solved.

The essential supporting capacities (4%): Successful organised crime disruption is not possible without advanced technological interception (surveillance, phone tapping etc.), a whole range of undercover operational capacities (long-term and short-term infiltration), international cooperation, strategic and tactical analysis and witness protection capacities. It is important to know what supporting units are needed for the OCFS to perform at its best and whether there is a need to establish such units.

The specialisation of detectives (3%): The flexibility and polycriminality of modern criminal organisations calls for a comprehensive team of various experts to disrupt their activities. Specialisation for detectives can be introduced for serious crime areas (e.g. cybercrime, mobile property crimes) in addition to increasing the understanding of the type, structures, traditions, culture and inner rules of the criminal organisations operating in the host state. Needs assessment for such specialisations could stem from national SOCTA findings.

Human resources (7%): The number of OCFS officers should be adequate for the number of relevant criminal proceedings and activities involving OCGs (depending on the sophistication and threat level). The right proportion for every unit can be determined taking into account that the operational (detecting and investigating) unit should consist of no less than 60% of the overall OCFS capacities. All the OCFS positions should be fulfilled.

The availability of external resources (2%): Clear procedures should be in place for the involvement ancillary human resources (IT expertise, analytics, international communication unit), especially when the OCFS does not have them.

Recruitment (9%):

- What is the motivation for the candidate to join the OCFS?
- What are the basic and specific requirements for joining the OCFS?
- What are the essential procedures that must be undergone prior to selection?
- What vetting procedures are in place?
- How should the selection process be performed?
- Who will give operational guidance for the officers within the OCFS after selection?
- How will the work results be assessed and what is expected from the employee?

Motivation (2%): Investigations into organised crime are challenging and demanding. Moreover, working for the OCFS may pose additional threats to staff members, including personal safety and corruption risks. Thus, clear motivational factors should be set to attract the best candidates to apply for positions in the OCFS. It might be hard to involve experienced officers from other departments if no motivation mechanism exists. Due to this, the LEA might need to assure a higher salary, and better benefits and career opportunities for OCFS staff or to identify other motivational aspects to encourage the candidates.

The requirements for candidates (2%): Experienced professionals are needed for the sophisticated organised crime investigations. Due to this, and in addition to the basic requirements to join the LEA, the requirements for the possible candidates (in particular, those for detective positions) might be set to requiring a minimum of 3–5 years of experience in serious crime investigation. In cases where the host state suffers from a high corruption level, the example requirement mentioned above could be ignored in order to recruit staff from outside the ‘system’.

Selection and vetting process (2%): Transparent procedures and a transparent recruitment process have to be assured, especially for the key management positions. The corruption risks during the recruitment process should be considered to be high and thus they need to be mitigated. For the selection procedure itself, establishing an advisory selection board with the involvement of international partners is a possibility. If the mandate allows, the CSDP mission staff can observe or participate in the selection/interview process. Advisory selection boards only have consultative powers, but can assist the OCFS management to choose the right person for the position.

Mentoring (1%): A mentoring system for new officers can be in place together with other tools for onboarding (e.g. induction training).

Performance review (2%): A clear methodology should be set for evaluating the performance of the OCFS staff members based on the impact on the organised crime threat generated by each officer's actions or contribution. Discrimination against non-operational officers within the OCFS during the performance review might be an issue and should be avoided (it is sometimes harder to assess the amount of work performed by an analyst or a technician). In addition, the individual key performance indicators for all categories of staff members should be drafted following suggestions below (skills and capacity building) and with fixed review frequency.

Skills and capacity building (6%):

- What is considered to be a basic/essential knowledge level for all the OCFS officers?
- What are the specific/additional knowledge development training programmes?
- Is there a need for psychologists for the trainings?
- How to measure the strengths and weaknesses of the OCFS officer?
- Does the individual officer have a personal development plan?
- What are the possibilities for voluntary professional development?
- Do the OCFS officers have access to online learning modules?
- What is the level of cooperation with other internal and external training institutions?

Essential skills (1%): The OCFS needs to determine what essential skills all the officers should have. According to this, the basic-level training programme for all OCFS officers can be developed.

Additional skills development (1%): Various training modules should be developed for all categories of the officers (investigator, criminal intelligence, analyst etc.). Curricula for advanced in-service training should be delivered by practitioners working in the field with a 30% theory to 70% practice ratio. Psychologists may be involved in some of the specific trainings (e.g. undercover trainings).

The officers' skills database (2%): While delivering trainings, the trainers, together with psychologists, could use the opportunity to monitor and evaluate the trainees in order to determine their skills, motivation and knowledge and to provide recommendations to the OCFS management regarding their further professional development (e.g. 'the trainee is a mediocre detective but has significant managerial and analytical skills, thus he can be recommended to become the head of the analytical unit').

The periodicity of improving professional skills and opportunities to raise the level of these skills (1%): The periodicity of improving skills in an in-house/external training (with a minimum number of training days per year) may be established. Opportunities should also be provided to all OCFS officers who voluntarily want to upgrade their professional skills. Part of the training could be available online (e.g. an e-learning module on cybercrime).

Cooperation with training institutions (1%): Cooperation with other internal and external training institutions – such as a police academy/ college, specialised criminal intelligence training centres and universities – should be established.

Finance and budgetary issues (6%):

- Is the OCFS budget available for assessment?
- Is the budget sufficient for all OCFS activities?
- Are there extra funds reserved for ad hoc activities?
- How does the budget correspond with the OCFS performance?
- What are the procedures for staff remuneration?
- How is expenditure for staff development or equipment justified?
- What is the salary vs bonus proportion for the OCFS staff (if such exist)?

Budgeting (4%): It might be tricky for the CSDP adviser to get familiar with the budget of the OCFS since it might be a sensitive question in most of the host states due to the overall character of OCFS activities. Nevertheless, a sufficient, stable budget and clear procedures for dissemination are of key importance for the stability of the OCFS activities. The possibility should be retained to get additional (ad hoc) funding for the criminal intelligence activities (e.g. informants handling) and witness protection. The OCFS is expected to apply performance-based budgeting but should be wary of unreliable statistics.

Remuneration and development expenditure (2%): Objective and transparent procedures should exist both for the budget allocation for staff remuneration and development expenditure (the purchase of equipment, delivery of training). If applicable in the host country, the bonus (up to 20%) and salary of the OCFS officers could be set based on a comprehensive methodology, without giving the opportunity for management manipulations. The Group of States against Corruption (GRECO)³⁷ recommendations could be used to ensure higher transparency.

- **Premises, ICT and logistics (6%):**
- Does the OCFS have separate premises?
- Do the premises have the essential requirements to ensure the protection and handling of classified data?
- Does the OCFS have separate premises for undercover and witness protection units? If not, how does the OCFS ensure that such units keep a low profile?
- Does the OCFS have an ICT strategy and infrastructure set?
- Can the OCFS ensure secure data exchange?

Premises (2%): The OCFS will be handling sensitive, classified information. This requires secure premises and relevant arrangements in order to process and store classified materials and/or to ensure the low profile of specialised units (e.g. undercover and witness protection units should be separate from investigation units).

Information and communication technologies (ICT) infrastructure (2%): The ICT strategy – as well as secure, reliable ICT infrastructure – should preferably be in place from the moment of establishment, aligning the necessary technology with the OCFS goals and ensuring secure direct connections to the regional OCFS units and other LEAs and relevant institutions.

³⁷ GRECO is part of the Council of Europe. See GRECO's recommendations in the Fifth Evaluation Round launched on 20 March 2017 to examine the prevention of corruption and to promote integrity in central governments (top executive functions) and LEAs. More details can be found at <https://www.coe.int/en/web/greco>

Equipment (2%): A list of equipment, ranging from specialised items such as tracking and recording devices to the vehicles and gear necessary for the OCFS to perform daily duties efficiently, can be tracked to see when the structure is operational. One can ask if there are procedures in place allowing the sharing of equipment with other units and LEAs (e.g. sharing night vision equipment with border guards).

Criteria C: Cooperation and coordination (8%)

- Are the functions of different LEAs in the area of combating organised crime properly delineated?
- What is the legal basis for cooperation and coordination between LEAs?
- What are the relations with the supervising authority?
- Is there a possibility to set up a task force internally/externally?
- What are the channels for inter- and intra-agency communication?

The delineation of competences (2%): A clear delineation of competences between the OCFS and other investigative structures has to be set. (For instance, different cases, such as traffic of human beings or drug trafficking, may be handled by other specialised structures depending on the host country.)

Cooperation and coordination with other LEAs (1%): A mechanism for the coordination of actions with other agencies (such as with border guards and a financial investigation agency) could be set up based on signed agreements. This could also allow building intelligence exchange bridges between the agencies.

Access to databases (2%): It is important to assess the OCFS's access to the information and databases provided by government institutions, which might include information related to OCGs and their activities.

Relations with supervising authority (2%): Effective working relations with the supervising authority (e.g. the prosecutor's offices at the central level and in regions) are necessary. Police-prosecution cooperation can be improved, for example, by hosting workshops together and discussing the decision-making procedures in investigative jurisdiction and the respective roles in organised crime investigations.

Task forces (1%): Conditions for setting up joint investigative teams (JITs) internally and with other LEAs should be discussed and this practice should be further encouraged and reinforced.

Criteria D: Regional OCFS resources management (13%)

- Are there any regional organised crime-fighting structures?
- Are there differences between various regions when OCFS regional units are set up? If so, how do they affect such a unit's tasks and structure?
- What are the procedures for communication and coordination between regional OCFSs and the HQ?
- What is the regional OCFS's chain of command?
- Can the regional OCFS receive resources from regionally based LEAs?

Structure and tasks (6%): Every region may have its specifics (its criminogenic situation, population, traditions etc.), so the tasks of regional OCFSs should be set accordingly. It can be asked how the regional structure matches and complements the central-level structure of the OCFS and why.

Communication with the OCFS regional units (2%): Clear communication and coordination lines and mechanisms within the OCFS headquarters (HQ) and its regional units need to be set up.

Subordination of the OCFS regional units (2%): The potential strengths and weaknesses of the subordination of regional OCFS units, either to the OCFS HQ or to the regional level, may be discussed. (For instance, regional OCFS unit subordination to the regional police HQ could save resources but may cause higher corruption risks and have a negative influence on the unit's performance.) Also the level of autonomy of the regional unit in decision-making needs to be determined.

Sharing the regional resources (3%): It is also useful to assess the level of trust and possibilities of the regional OCFS units to share resources with other regionally based law enforcement structures (e.g. to assess whether the regional OCFS unit can use and trust the regional police surveillance teams). The possibility to use the resources of the HQ for regional purposes (and the modus operandi when doing so) and vice versa also need to be determined.

Criteria E: The legal framework and powers (7%)

- What relevant legislation related to the OCFS exists?
- What legal issues might occur during the process of establishing an OCFS?
- What legal powers should the OCFS officers receive?

Legislative framework (3%): Analysis of the existing legal framework, together with identification of the relevant amendments or pieces of legislation that are currently pending for political support, is indispensable. The OCFS should have the possibility to communicate the need for changes in the legal framework related to organised crime investigations through the relevant chain of command.

Legislative issues related to the establishment of the OCFS (1%): There might be legal delays limiting OCFS operational possibilities during and after its establishment. In addition, it can take up to several months for internal SOPs to be developed and approved, which are essential for the OCFS to perform covert investigative actions such as phone tapping.

Legal powers (3%): OCFS officers should have/receive a sufficient set of powers (no less than the host state's police investigation units have) in order to deploy all the techniques available to counter organised crime.

Criteria F: Integrity, corruption prevention and accountability (7%)

- What are the OCFS internal corruption prevention and disciplinary mechanisms and how are they enforced?
- Is the OCFS subject to a complaints mechanism and, if so, how are such complaints handled?
- How is the OCFS accountable to the government and the general public?

Compliance with corruption prevention mechanisms (2%): The process of compliance with external corruption prevention mechanisms (e.g. e-declarations and vetting) should be ensured by the OCFS management. In addition, integrity and anti-corruption modules (guidelines, SOPs etc.) should be developed and included in the regular in-house training for the OCFS staff.

Disciplinary systems (1%): These should be in place and be objective and compliant with the broader police system. Managerial capacities need to be ensured to enforce the mechanisms.

Complaints mechanism (1%): The OCFS might be subject to a complaints mechanism. If they are, transparent procedures and responsibility for handling such complaints should also be in place.

Accountability (3%): The OCFS may publish an annual report in order to inform the government about its progress in meeting the commitments set out in the annual plans even if this is not clearly required by legislative provisions. In addition, the OCFS might be responsible or the main contributor for drafting and publishing the organised crime threat assessment, a reduced version of which could be made available to the public.

STEP 4

The OCFS is (more) effective: Establishing an OCFS or performing its functional review has the purpose of increasing the host country's organised crime disruption capacities. Sometimes, it might be difficult to assess if the OCFS is performing better and in a more effective way. A number of progress indicators are thus useful for the CSDP mission adviser to check if the OCFS performance has improved. Such measurable indicators may include the following:

- a national SOCTA shows a decrease in the level of organised crime
- an increase in the number of high-threat level OCGs detected
- a better conviction rate for OCG cases in court
- a new modus operandi for OCGs is revealed
- the amount of seized assets and illegal commodities (e.g. drugs, firearms) from organised crime
- an increase of public trust in the LEA/OCFS (e.g. indicated by mission-commissioned surveys)
- international partners more willingly share intelligence information (an increased amount of intelligence correspondence)
- other indicators

Note: The EU should not overload the organised crime fighting structure with too high expectations and require an immediate improvement in its performance. A successful investigation of criminal organisations might take years. Pushing the OCFS in order to produce results might lead to distortion in the form of manipulating the statistics to please the international community (e.g. in order to increase the number of detected OCGs, the work could be refocused on easily detectable low-threat-level OCGs) or even performing illegal activities (e.g. tampering the evidence, for instance, planting drugs during house searches).



Photo by National Police of Ukraine.

EUAM advisers meet with the Deputy Head of Ukrainian National Police, Vyacheslav Abroskin, to discuss details of the new OCFS.

2.2. Internal regulations and SOPs

2.2.1. Advising on an effective regulatory framework

The role of regulations: While the organisational structures and their performance are important, their intervention powers and possibilities depend on a regulatory framework. Apart from international and national legislation, internal regulations and SOPs make for a lower level of regulatory framework. They are equally important for the effective functioning of the structures fighting organised crime. They are aimed to interpret existing legislation and explain in detail how the mechanisms and procedures outlined in the legal framework are supposed to function in practice.

In case the CSDP mission adviser has sufficient capacities and motivation, and a profound understanding of general legislation in the area of organised crime of the host country, advising on the revision of the appropriate internal regulations and SOPs could be a logical next step after focusing on the strategic and organisational framework in the host country. This will contribute to an overall understanding of existing mechanisms and instruments available for combating organised crime. Moreover, it could pave the way for further strategic and tactical advising.

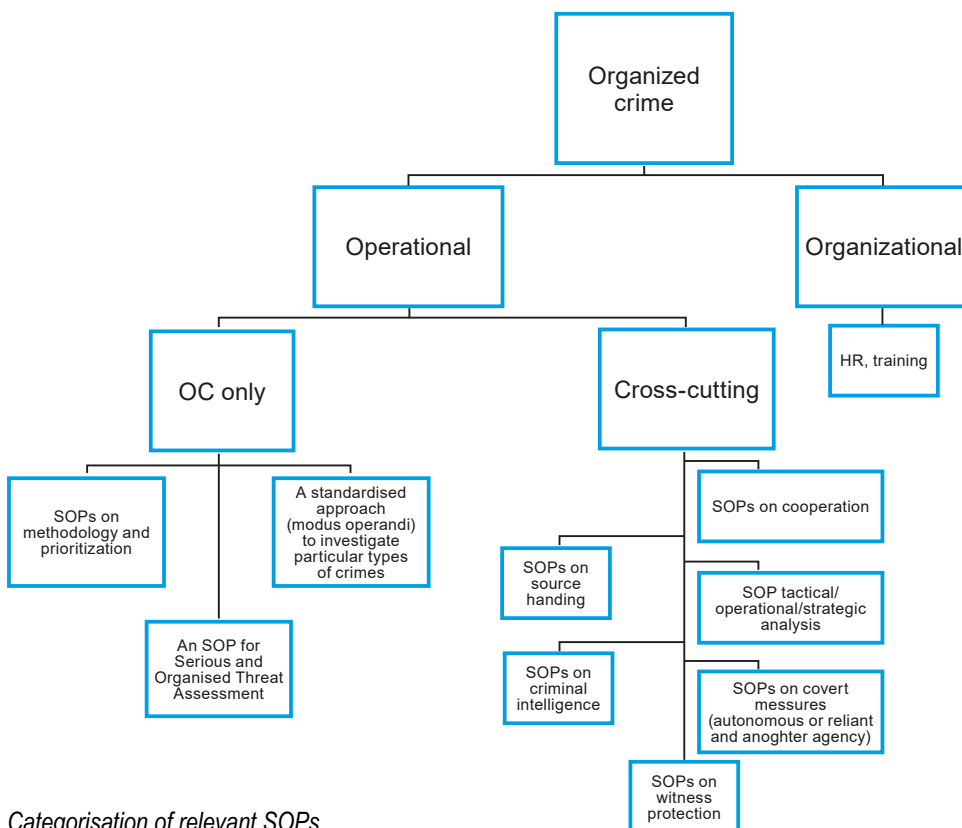
Tips for the revision of internal regulations and SOPs:

- ✓ Map out and further systematise existing documents pertinent to organised crime.
- ✓ Identify gaps in the effective regulatory framework (e.g. the regulation is outdated due to new amendments made to the general legislation or it is missing regarding emerging phenomenon like cryptocurrencies).
- ✓ Detect discrepancies and collisions within already existent documents.
- ✓ Identify the documents which are already in the pipeline (those under development or in the approval phase).

Many internal regulations and SOPs can be relevant to the area of combating organised crime. This depends on the legal rules, procedures and traditions of the host country and the respective LEA. A process of mapping out internal documents means a considerable amount of legal paperwork, which in turn requires, at minimum, fluency in the host country's language or full-time language assistance, as well as a significant amount of time. In this regard, it is worthwhile considering the option of either relying on the assistance of the CSDP mission's local staff members or outsourcing the mapping activity to a contracted local legal expert / NGO / legal company. The second option appears to be more preferable as it allows keeping in-house resources focused on strategic issues and getting the proper product within a reasonable time.

Internal regulations and SOPs on the same subject can vary from agency to agency. It is thus advisable to start looking into those documents which are binding for all, or at least several, LEAs. Depending on the legal traditions of the host country, the SOPs and regulations could be restricted or even classified. Therefore, in order to avoid possible complications related to information security procedures, it best to clarify the status of the relevant documents in the first place with the beneficiaries before requesting further processing and analysis.

It is also advisable to **categorise** the **relevant SOPs and regulations** which particularly concern the area of combating organised crime. Initial classification could be made based on the criteria of the documents' general character, separating *organisational (supporting)* documents and *operational* documents. The regulations and SOPs with a strong focus on training, financing, logistics and procurement belong to the organisational (supporting) category. Operational documents cover the practical aspects of combating organised crime and can be further subdivided into *crosscutting* documents and documents *specifically designed* for combating organized crime.



Categorisation of relevant SOPs

The CSDP mission may have experts covering organisational and crosscutting matters, including human resources advisers or public finance advisers. Relevant experts can be engaged to analyse the appropriate SOPs and regulations while organised crime advisers would focus on those which are particularly relevant to the organised crime sphere. The number of such documents differ from country to country.

2.2.2. Illustration of the possible SOPs focusing on organised crime

Outlined below are three model papers (A-C) dedicated exclusively to the area of countering organised crime. Such suggestions can be used as a starting point for brainstorming sessions with national stakeholders when discussing possible improvements in the internal regulations.

A. The idea for the SOP for the prioritisation of OCGs and criminal organisations stems from the question on how to assess the level of threat posed by organised crime. Such a regulation can become a handy instrument for the rational distribution of available resources, which are commonly insufficient for effective investigation of every single OCG. Such an SOP contains a methodology for how to evaluate the threats and risks posed by individual criminal groups. This may be based on a scoring system measuring the particular characteristics of individual OCGs (e.g. the number of members, criminal expertise and armament) and visualised in the form of simple table as shown in the following example from the UK.

The Management of Risk in Law Enforcement³⁸ matrix is an assessment tool with which to assess, score and prioritise OCGs and high-priority individuals based on the threat, harm and risk they pose to the region. It has been developed and is currently used in the UK.³⁹

Thematic Area	MoRiLE Matrix													Risk	Organisational Position			
	Individual	Community	Harm					Total Harm Score	Likelihood				Capacity		Capability	Total OP Score	OP Grading	
			Public Expectation	Environmental	Financial	Organisational	Org Economic		Frequency	Volume	Confidence Score	Total Likelihood score						
Dwelling Burglary	1	1	1	0	1	1	1	6	2	1	1	4	24	0	0	0	14.4	
Aggravated Burglary	4	2	2	0	2	2	1	13	0.5	2	2	4.5	58.5	0	1	1	35.1	
Modern Slavery	4	4	8	0	2	4	4	26	0.5	3	3	6.5	169	3	2	5	169	
CSE	4	2	8	0	0	4	4	22	1	0.5	3	4.5	99	3	3	6	198	
Dwelling Burglary	1	1	1	0	1	1	1	6	2	2	1	5	30	0	0	0	18	
Aggravated Burglary	4	2	2	0	2	2	1	13	0.5	2	2	4.5	58.5	0	1	1	35.1	
Modern Slavery	4	4	8	0	2	4	4	26	0.5	2	3	5.5	143	3	2	5	143	
CSE	4	2	8	0	0	4	4	22	1	1	3	5	110	3	3	6	220	
Dwelling Burglary	1	1	1	0	1	1	1	6	2	1	1	4	24	0	0	0	14.4	
Aggravated Burglary	4	2	2	0	2	2	1	13	0.5	3	2	5.5	71.5	0	1	1	42.9	
Modern Slavery	4	4	8	0	2	4	4	26	0.5	3	3	6.5	169	3	2	5	169	
CSE	4	2	8	0	0	4	4	22	1	3	3	7	154	3	3	6	308	

38 The United Kingdom's Home Office: *Management of Risk in Law Enforcement (MoRiLE) based scoring: standards*, London 2018, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679814/Tactical-MoRiLE-Scoring-Standards-v1.0EXT.pdf

39 The table is borrowed from B. White: "Serious and Organised Crime Local Delivery", Home Office, London 2015, available at: <https://www.local.gov.uk/sites/default/files/documents/rebecca-white-serious-and-fff.pdf>

The SOP on the prioritisation of OCGs has a number of advantages to be highlighted when promoting the idea to the host country counterparts:

- it supports the decision-making process
- it rests on a clear and transparent methodology (it has objectivity)
- it can be quickly developed and implemented
- it is not expensive as it does not require any sophisticated and costly IT products – data collection and processing are conducted by using basic functionalities of Excel spreadsheets
- it illustrates dynamics if applied on a regular basis
- no specific training is needed for staff members engaged in using it
- it can be introduced without legislative amendments

B. The regulation of the SOCTA is another document particularly relevant to the area of organised crime and, if properly developed, can become a crucial policymaking and management tool on both strategic and tactical levels in the host country.

Looking from the EU perspective, the SOCTA developed by Europol is not a stand-alone solution but an integral part of the EU policy cycle. This cycle is a four-year plan for fighting serious crime and organised crime on chosen crime priorities. The SOCTA is the starting point for the cycle as it serves to identify criminal threats and risks, which are then prioritised and agreed upon at a political level. The threats are addressed through the multi-annual strategic plans (MASPs) and the European multidisciplinary platform against criminal threats (EMPACT) with operational action plans. At the end of each policy cycle, a SOCTA is used as one of the instruments for evaluating efforts to tackle crimes in the EMPACT priority areas.

A national SOCTA thus aims to identify, describe and assess the threats posed to a country at present and in future, covering the whole range of serious crime and OC activities. Moreover, the SOCTA is helpful, on strategic and operational levels, in understanding the impact of organised crime activities, and various criminal markets and sectors, as well as in understanding the membership rules and structures of organised criminal groups. By combining both quantitative and qualitative data analysis, it describes serious crime and organised crime activities, and assesses their threats, the extent of the risk they pose and the level of harm they cause, both now and potentially in the future.

To some extent, the SOCTA methodology helps in finding a common language between several LEAs. It eases the joint analysis of organised crime-related data. In addition, it provides tools for the authorities developing strategic documents.

Furthermore, the SOCTA methodology enables the comprehensive assessment of organised crime threats and related serious crimes. It is significantly different from a simple criminal statistics analysis. The SOCTA includes an analysis of both criminal markets and areas of criminal activities as well as analysis of organised groups and criminal organisations. Moreover, it contains analysis of factors in a broader context. The data required for the SOCTA may be missing in the first place. This is one of the consequences of applying an approach that is different from a traditional statistics-driven one.

The Kosovo SOCTA 2014–2015 was prepared by the Kosovo Police with other LEAs contributing to it. International partners (the OSCE, the Geneva Centre for Democratic Control of Armed Forces) in their turn supported the development process. The data used as a basis for development of the document was regarded as ‘inclusive, including official data from the Kosovo Police, data from other relevant institutions, independent and specialised agencies, various NGOs, data from the private sector, but also data from open sources, including different researches from local and international organisations’.⁴⁰ Processing and analysing this comprehensive information resulted in the identification of priorities regarding what posed the highest level of threat (e.g. human trafficking, violent radicalism and extremism, smuggling) and what should be properly addressed as a matter of priority.

From a practical point of view, the SOCTA regulation has to be a comprehensive document focusing not only on the SOCTA methodology but also covering all aspects related to data collection, collation, analysis, preparing and presentation of the report.

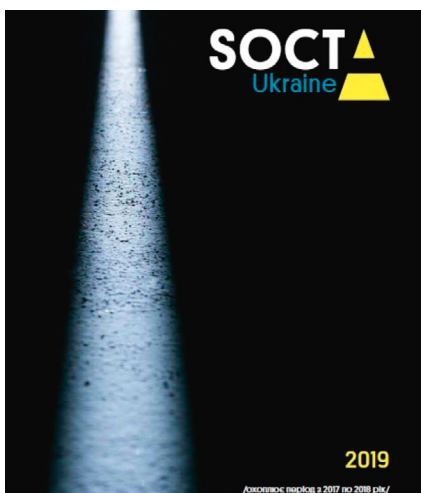
Ideally, a number of authorities will be involved in developing the SOCTA. Thus, it is important for the regulation to include detailed provisions on:

- overall coordination of the process
- the multi-agency working group or task force responsible for producing the SOCTA
- information flow and management
- the decision-making process for the final product
- the implementation of the priorities identified in the SOCTA

⁴⁰ Republic of Kosovo, Kosovo Police, *Kosovo Serious and Organised Crime Threat Assessment SOCTA 2014–2015*, p. 7, available at: http://www.kosovopolice.com/repository/docs/SERIOUS_AND_ORGANISED_CRIME_THREAT_ASSESSMENT_-_SOCTA,_2014-2015.pdf

C. The regulation on or SOP for a standardised approach (modus operandi) to investigating particular types of crimes involving organised crime could be regarded as a logical extension of the previous types of document. In case either the SOCTA or another analytical product in the area of organised crime indicates criminal activity or an illegal market as a significant threat or if there is a real risk of it turning into a threat in the near future due to involvement of organised criminal groups, this opens up the prospect of strategic advice.

Before advising on the development of a standardised approach to such a (possible) threat, one has to make sure this phenomenon has not been covered by existing regulations or SOPs. If this is not the case, the mission can bring the issue up with the relevant authority (or authorities) of the host country. Only by ensuring buy-in and support from the host country's authorities is there a good chance that the document produced will be actionable and used. Moreover, when working on a methodology with which to deal with a new threat (or new threats), the mission will face the need to get detailed information on the situation, which is unrealistic to gather in the case when the beneficiary is not interested in the outcome.



SOCTA Ukraine to be published in 2019

Recommendations:

- ✓ The initial **assessment** of internal regulations and SOPs can be limited to a simple revision of the available documents and interviews with the representatives of the different agencies engaged in combating organised crime. Outsourcing this activity is advisable as it potentially saves the mission's human resources.
- ✓ CSDP mission's members with relevant expertise should be engaged to assist with the **revision** of regulations and SOPs (organisational and operational crosscutting).
- ✓ Local buy-in is indispensable before focusing on particular organised crime-related regulations and SOPs. Relevant documents from other countries may be used to illustrate how similar issues are dealt with elsewhere and serve as examples of good practice. However, internal regulations always need be locally owned and tailor-made.

An example of a specific threat: organised crime and terrorism

Organised crime and terrorism are at core two different phenomena: while the former is driven by financial profit, the latter's motivation lies in a revolutionary ideology, often intended to replace an existing order. Organised crime does not aim to replace state authority but seeks to protect its own illicit activities. And while doing so, organised crime groups try to avoid attention; terrorism involves the 'propaganda of the deed' and intentionally seeks to draw as much attention to its activities as possible.

At the same time, terrorist groups need to finance their activities, procure illicit materials and/or rely on services and activities that they are unable or unwilling to get involved with themselves. Terrorist cells are known to have financed their activities by low-level criminal activity. Especially in conflict- and post-conflict societies, it is not uncommon to see terrorist groups financing their activities with illegal activities. These activities may vary from involvement in drug trafficking ('narco-terrorism') to illegal trade in antiquities looted from archaeological sites. In many cases, terrorist actors use middlemen in these activities or 'tax' activities conducted under their protection. Often these criminal activities are transnational and involve moving of goods across national borders.

The terrorist group ISIS generated revenue through involvement in several illicit activities, including the trafficking of looted antiquities from Iraq and Syria and selling them on the black market via middlemen. It is assessed that this alone generated up to \$100 million for the terrorist group.

An example from EUAM Iraq: organised crime and cultural heritage

Iraq is home to many of the large archaeological sites of the world. The country hosts six UNESCO World Heritage sites: Ashur, Erbil Citadel, Hatra, Samarra archaeological city, Ahwar and, the latest addition, the ancient Mesopotamian city of Babylon (added in July 2019). There has been tremendous destruction of cultural heritage during the recent wars and fighting, especially after 2003. Militant groups have destroyed mosques, archaeological sites, churches and shrines and have illegally trafficked antiquities. The unstable security situation has resulted in the severe loss of invaluable archaeological artefacts and scripts.

EUAM Iraq was launched in October 2017 in response to a request by the Iraqi government for advice on how to undertake CSSR. The EU attaches high importance to preserving cultural heritage and preventing illicit trafficking of cultural property and is helping to facilitate the collective, cross-border responses that are necessary to counter the dangers emanating from the loss of cultural heritage. The protection of cultural heritage is linked to both security sector reform and security in Iraq. Failure to protect cultural property provides terrorists and other criminals with funds, it emboldens them to continue destroying and looting, and it undermines societal security by depriving the population of its identity, which potentially breeds extremism.

Increasing international information exchange and cooperation can significantly ease the fight against serious crime, organised cross-border crime and financing terrorism. EUAM Iraq supports the Ministry of Interior in developing a national strategy on countering organised crime and will in the future facilitate its

implementation phase. In addition, EUAM Iraq has organised two workshops on the protection of cultural heritage, focusing on identifying the main challenges that the Iraqi security authorities face in protecting and repatriating cultural heritage, as well as focussing on exploring ways of cooperation between different national and international agencies in order to strengthen collective efforts to preserve cultural heritage by preventing and investigating heritage crimes.



Photo by Anna Palmen

An EUAM workshop on protecting cultural heritage in The Iraq Museum, Baghdad.

2.3. Inter-agency cooperation and coordination

2.3.1. Mutual trust is essential for inter-agency cooperation

Good coordination and cooperation increases the effectiveness of LEAs in combating organised crime. To achieve better results, the efforts of the LEAs exercising their respective powers need to be unified and streamlined, eliminating duplication in their work. Jointly, new effective forms of counteraction to disrupt modern, flexible and polycriminal organisations can be identified. Fluent inter-agency cooperation also opens the doors for operative international cooperation as international partners can rely on agencies that already cooperate smoothly on the national level.

In order to enhance the cooperation with other LEAs, **sufficient intra-agency cooperation** should first be ensured. Successful OCG disruption requires teamwork within an institution. Prior to advising local counterparts on actions to increase inter-agency communication, a CSDP adviser may need to review the internal processes in order to avoid internal the duplication of work, misunderstandings and the ineffective use of resources within an LEA.

Next, assessing **the level of inter-agency cooperation** between the relevant LEAs can be followed up with the help of the following checklist. The participating LEAs can be compared to see if they:

- ✓ demonstrate good intra-agency cooperation and coordination
- ✓ host regular coordination meetings
- ✓ coordinate actions on operational and tactical levels
- ✓ exchange strategic data for common analytical products (e.g. for the SOCTA)
- ✓ share criminal intelligence (e.g. there is large amount of intelligence correspondence and/or a high number of initiated cases based on another LEA's intel)
- ✓ organise, plan and hold joint operations
- ✓ initiate joint task forces
- ✓ have significant results on organised crime disruption based on inter-agency cooperation
- ✓ have the possibility to use the resources of each other (e.g. exchange officers are used for undercover operations)
- ✓ participate in or host joint trainings, workshops and conferences
- ✓ have a low corruption or intelligence leakage risk

A number of **challenges for building up more effective inter-agency cooperation** may be identified. The representatives of the local agencies may have a number of objective reasons and/or subjective reasons limiting their willingness to cooperate. To facilitate contacts and communication, a CSDP adviser can initiate roundtables and workshops providing the first platforms for non-binding discussions and also helping the local counterparts to pinpoint obstacles limiting the inter-agency cooperation, also realising the risks and missed opportunities. A common problem identified not by a single authority but by all the relevant parties together has a much better chance of being solved.

An example of a situation	The risks and lost opportunities
Different surveillance units of the same LEA perform surveillance on the same OCG members with the aim of arresting them and they do not cooperate and coordinate actions with each other.	Surveillance and undercover operations are at higher risk of being detected or there can be even worse consequences (e.g. 'Five police officers in Ukraine were killed by friendly fire during an operation. The incident was blamed on a misunderstanding between different structures within the police' ⁴¹).
LEA A seizes an OCG drug courier without knowing that LEA B has organised controlled delivery to the same suspect as a part of long-term in-depth OCG investigation.	The threat of sabotaging a long-term OCG investigation; the loss of time and resources; the possibility of sabotaging LEA B's intelligence source or undercover officer.
Specially programmed cell phones for encrypted communication are being used by the members of an OCG and only LEA A knows how to intercept them.	Lacking possibilities to share expertise and lessons learned gives an opportunity for the members of the OCG to operate under the radar much longer.

Cooperation may be feasible on paper, based on legal acts and memorandums between the agencies, but in practice, cooperation starts by one agency taking the big step of sharing data with another. Agencies have a trusting relationship if sensitive criminal intelligence data (e.g. the whereabouts of a major drug delivery) is shared. Earning such trust takes time. A CSDP mission can encourage the exchange of less-sensitive information just to enable the process to start. Such information can be related to an organised crime threat in general, the modus operandi of OCGs or be preventative information. As soon as both agencies initiate the data flow process, it is advisable to gradually raise the level of the sensitivity of the shared data, going from the strategic level to more operational and tactical levels.

41 BBC: "Ukraine: Five police killed in friendly-fire shoot-out", 4.12.2016, available at <https://www.bbc.com/news/world-europe-38200089>

Lessons from EULEX Kosovo with an executive mandate:

EULEX Kosovo was launched in 2008 to assist the Kosovo authorities in establishing sustainable and independent rule-of-law institutions. With executive powers, EULEX Kosovo was to 'ensure that cases of war crimes, terrorism, organised crime, corruption, inter-ethnic crimes, financial, economic crimes and other serious crimes are properly investigated, prosecuted, adjudicated and enforced, according to the applicable law. Where appropriate, this was to be done by international investigators, prosecutors and judges jointly with Kosovo investigators, prosecutors and judges or independently'. Appropriate 'cooperation and coordination structures between police and prosecution authorities' were to be created. The mandate underlined that the mission was to strengthen cooperation and coordination throughout the whole judicial process, particularly in the area of organised crime.

EULEX Kosovo did not have an easy start. Even though it was not to replace the UN Interim Administration Mission in Kosovo (UNMIK), EULEX Kosovo inherited numerous case files of war crimes from UNMIK that had been poorly investigated, stored and, in most cases, lacked the substantial evidence that would lead to a likely criminal trial. EU Member States gave EULEX Kosovo a demanding mandate of executive responsibility in a country that had just declared independence in the same year and had a young police and judiciary system.

EULEX Kosovo is a case in point of how an essential part of investigating organised crime and war crimes is the immediate case selection and prioritisation. As a lesson taken from EULEX Kosovo, any such newly launched mission has to carry out a preliminary investigation regarding all pre-established cases and complaints. An analysis of the preliminary enquiries will conclude which cases fall under the mission mandate and the host country's legislation. Cases to be focused on should include clearly recognised offences and cases with the possibility for strong evidence collection (including witnesses and even perhaps physical evidence). On the contrary, cases that lack evidence or do not have any witnesses should be discarded immediately following the case selection process. At the same time, it is extremely important that the basis and the used criteria, both for case termination and the decision not to take the case into investigation in the first place, are clearly explained to all parties.

Another lesson to be drawn from EULEX Kosovo is that the target selection process and intelligence gathering, analysis and dissemination, as well as the distribution, need special attention and can always be improved. Confusion between such terms as information and intelligence in criminal investigations was sometimes quite evident in the mission. Pieces of information that were gathered through diverse sources, for instance, through informants and surveillance, were erroneously considered as actionable intelligence or a basis for decision-making. However, this type of information was only raw data that should have been processed and assessed for validity, reliability and materiality. It should also have been subjected to inductive and deductive reasoning in order to determine its true investigative value. Understanding the raw information and determining what it means should be based on knowledge. It should be shared for the use of investigation units. Simply put, criminal intelligence is analysed and disseminated information that can be used to take action.

The third lesson, taking into account the very ambitious mandate of EULEX Kosovo, is the importance of staff selection. EULEX Kosovo was deployed to work in a joint effort with the local authorities in order to develop a working rule-of-law system in Kosovo in accordance with the best European practices. The selection of personnel was crucial to ensure effective mandate implementation and achieve an independent and functioning justice system in Kosovo. For example, EULEX Kosovo police officers were there to support, mentor and advise the Kosovo Police. Therefore, EULEX officers should have been specifically recruited in order to offer expertise and knowledge on criminal investigations, including war crimes, to the local Kosovo Police officers. Undesirably and unfortunately, some EULEX officers lacked an investigative interviewing background. Even prosecutors that had previously worked in civil law or who had little experience working on criminal investigations or taking part in criminal trial proceedings were recruited to handle serious criminal cases.

While EULEX Kosovo has been downsizing for years, it still is the EU's largest-ever civilian mission. Despite different accusations and criticism over the years, the mission itself was not a failure. It has helped to further develop and strengthen Kosovo's judicial and police system. European prosecutors were involved in different stages of the proceedings in well over a thousand cases, including cases addressing war crimes, terrorism, corruption and organised crime cases. The mission helped create good examples for the Kosovo rule-of-law institutions and for a new generation of law professionals, some of them former members of the mission. Since then, a lot of the mission's executive powers have been fully handed over to the local judiciary. The mission now monitors selected cases, which had been dealt with by EULEX prosecutors and judges.



Photo by Tanja Tamminen

President of the European Council, Herman Van Rompuy, visited EULEX Kosovo, the largest EU civilian crisis management mission to date, in 2010.

2.3.2. Organised crime task forces as a useful format

While the National Coordinator (see Section 1.2.3) has a key role in strategic decision-making, there is still a need for other coordination and cooperation structures on operational and tactical levels. This is especially crucial in cases where the host country has significant territory and/or has several agencies involved in combatting organised crime. To strengthen possibilities to effectively detect and investigate sophisticated polycriminal OCGs, a CSDP adviser can propose the establishment of inter-agency task forces for combating organised crime on more local and/or regional levels. The main overall objectives for such a **Regional Organised Crime Task Force** (ROCTaF) could be the following:

- detecting, investigating and disrupting criminal organisations and OCGs known to be the biggest threats to society in the region
- maximising the use of LEAs' resources for combating prioritised organised crime threats
- monitoring, collecting and analysing criminal intelligence on OCGs' activities in the region
- preventing crimes from being committed by OCGs
- coordinating the actions of all LEAs in the regions when it comes to major OCG cases
- developing the best procedures and techniques for dismantling criminal networks

The inter-agency approach, when several authorities are working together in order to disrupt OCGs, is in line with the best European practices. Examples of effective organised crime task forces include the following:

The Regional Organised Crime Unit⁴² (ROCU), in the United Kingdom, provides specialist services on a regional level that individual police structures would not be able to provide for themselves. This includes capacities such as specialised surveillance resources, resources for undercover activities and cybercrime specialists, as well as disruption and investigation teams.

The Operations Council⁴³ (OpR) in Sweden was established in 2009. The Swedish approach to combating organised crime includes a multi-agency approach. Eight LEAs and other authorities work side by side to combat crimes and restrain criminal proceeds, forming a special body. The OpR has the capacities to gather and share information/intelligence on criminal networks and individuals, it has designated resources that allow operations on extended periods of time and it includes close police–prosecutor cooperation.

42 <https://www.ncsc.gov.uk/information/regional-organised-crime-units-rocus>

43 <https://www.ekobrottsmyndigheten.se/>

The Intelligence Center for Counter-Terrorism and Organized Crime⁴⁴ (CITCO) in Spain was established in 2014 and is responsible for the reception, integration and analysis of strategic information related to the fight against organised crime, terrorism and violent radicalism. It also designs specific strategies against these threats and, where appropriate, provides criteria for action and operational coordination.

Regional Information and Expertise Centres (RIECs) and the National Information and Expertise Centre (LIEC)⁴⁵ in the Netherlands raise awareness of organised crime among administrators and public officials. In addition to increasing knowledge on the administrative strategy used to combat crime, they are also involved in practical cases and have an advisory role in the administrative approach to combating organised crime. Together, the RIECs and LIEC form a nationwide network.

If the opportunity arises to give advice on setting up a ROCTaF to enhance inter-agency cooperation, a number of challenges need to be analysed. The host state will have to identify the LEA that will take the lead role in the future ROCTaF. The will of other LEAs to join the task force needs to be ensured. How to get the best officers to work in the task force is also a question to be asked. The CSDP adviser should make sure that all potential LEAs understand the objectives and challenges, as well as the benefits, of establishing and participating in the ROCTaF. The decision to establish a ROCTaF should be made unanimously after discussions with all the relevant LEAs in the region. When preparing the basic structure of the ROCTaF, the following checklist may be useful:

44 <http://www.oposicionesnacionales.com/organos-de-coordinacion-dependientes-del-secretario-de-estado-de-seguridad-el-centro-de-inteligencia-contra-el-terrorismo-y-el-crimen-organizado/>

45 <https://english.wegwijzermensenhandel.nl/Organisations/regionaalinformatieenexpertisecentrumriec.aspx>

Legal justification	<ul style="list-style-type: none"> ✓ What is the scope and objectives of the ROCTaF (including powers and limits)? ✓ What is the legal status: institutionalised task force / inter-agency working group? ✓ Is the leading LEA an initiator of the ROCTaF's establishment?
The geographical scope	<ul style="list-style-type: none"> ✓ What is the geographical scope of the ROCTaF's activities?
The location of the ROCTaF	<ul style="list-style-type: none"> ✓ What are the premises? Where will the members of the ROCTaF meet? ✓ What are the communication principles: colocation or coordination meetings?
The LEAs taking part	<ul style="list-style-type: none"> ✓ Which LEAs will join the ROCTaF and why? ✓ What is the added value for a LEA to join the ROCTaF? ✓ What are the benefits of having a particular LEA in the ROCTaF? ✓ What is the process for the nomination of LEAs to the ROCTaF?
The organisational principles of the ROCTaF	<ul style="list-style-type: none"> ✓ What is the working structures' coordination meetings frequency? ✓ What is the decision-making process? ✓ What are the general responsibilities and specific roles of the members within the ROCTaF (team leaders, analytics etc.) and the nomination procedure? ✓ Is there criminal intelligence collection and sharing within the ROCTaF? ✓ Is there sharing of other types of data? ✓ What are the principles for sharing each other's resources? ✓ What is the availability of resources? ✓ How is the ROCTaF funded? ✓ Is there the involvement of governmental organisations and NGOs?
The expected results of the ROCTaF and benchmarking its efficiency	<ul style="list-style-type: none"> ✓ Drafting an OC threat assessment, that is, providing a single regional capability that will assess, manage and understand the threat and risk from serious and organised crime ✓ The identification of knowledge gaps and training needs ✓ Deciding on actions contributing to a national OC strategy (if such exists) ✓ The identification of the modus operandi of the OCGs active in the region ✓ The coordination of the disruption of key criminal organisations in the region through multiple joint measures, which include intelligence gathering and pre-trial investigations ✓ Coordinating the preventative measures and raising public awareness
Accountability, ethics and professional principles	<ul style="list-style-type: none"> ✓ Accountability, including accountability to the public ✓ The ethical and professional principles of the ROCTaF

Example: ROCTaFs in Ukraine

Due to the poor inter-agency cooperation between what are almost a dozen LEAs involved in combating organised crime and in order to provide an adequate response to increased OCG activities, EUAM Ukraine advised Ukrainian authorities to establish ROCTaFs in the regions. After monitoring a successful ROCTaF pilot in one of the regions, the approach has been expanded countrywide. The legal background of such ROCTaFs are the inter-agency orders signed by all parties at regional level. The standardised principles of work are based on ROCTaF Guidelines developed together between EU advisers and Ukrainian authorities and disseminated through countrywide trainings. In order to further support and promote the initiative, both EUAM Ukraine and an EU Commission-funded project together provide equipment to the successful ROCTaFs.

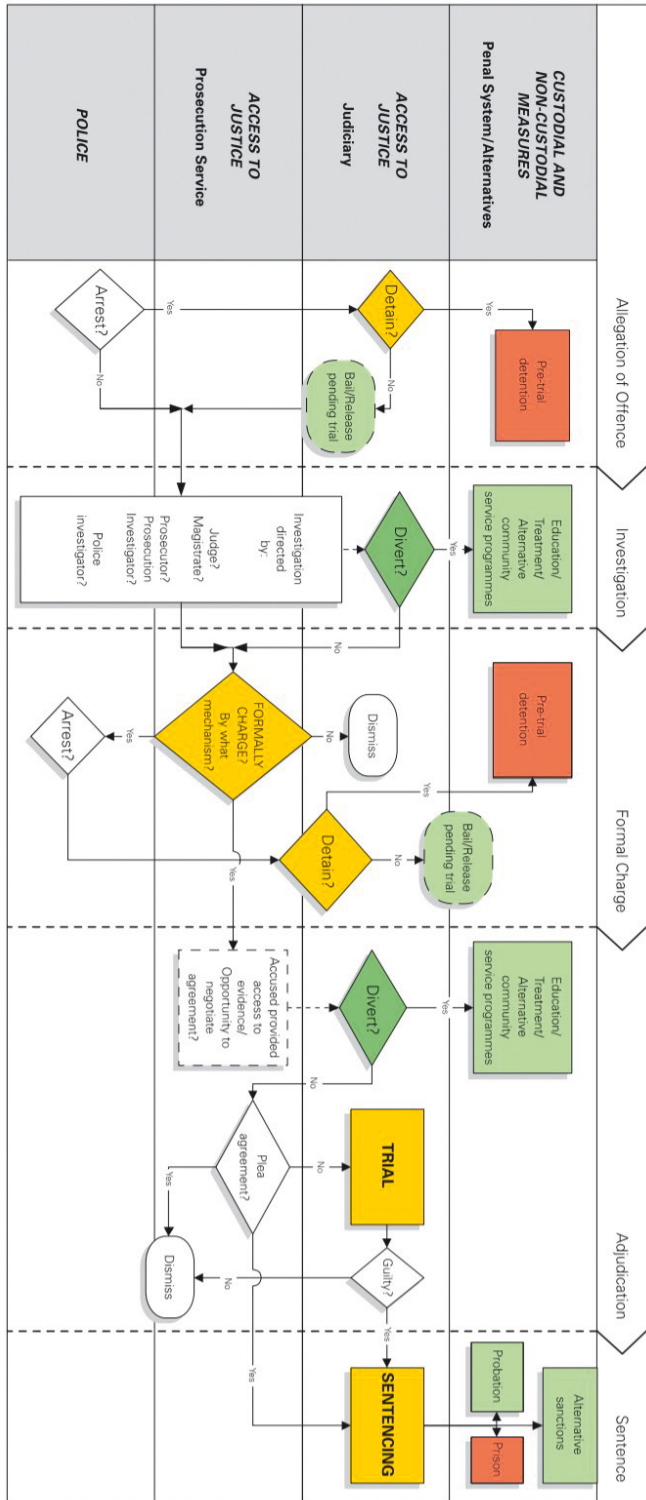


Photo by Paulius Klikunas

A ROCTaF workshop in Kharkiv, Ukraine, that highlights the fact that inter-agency cooperation is always about communication and good human interaction.

2.3.3. Cooperation throughout society

Inter-agency cooperation through the criminal justice chain is key in disrupting OCGs. When dealing with organised crime cases, investigative and prosecution authorities try to cover the widest possible range of criminal activities to disrupt the criminal network activities, ensuring that none of its branches remains active in the future. The involvement of the whole criminal justice chain (investigation, prosecution, courts and penitentiary) is essential. Huge evidential data and other relevant data may have a negative impact, delaying a complex investigation as well as court proceedings. In many countries there are an insufficient number of judges specialised in working on sophisticated organised crime cases. It may take years to reach the final verdict for the members of OCGs. In most of the cases when the organised crime investigations are delayed, the members of an OCG may believe they can get away with being unpunished for the committed crimes.



UNODC Decision Points in the Criminal Justice Process

Therefore, it is recommended to initiate a workshop together with all the actors dealing with policing, prosecution, the judiciary and the sanctioning of crimes in order to identify the most pressing problems and risks ahead. Joint discussions are beneficial as, separately, each actor has tendency to look at the picture from a specific perspective (for instance, the police complain about the prosecution losing cases while the real reason may be that the police made significant procedural violations during the evidence-gathering phase and the evidence is blown away by the defence). The decision points in the criminal justice chain tool below (produced by the UNODC)⁴⁶ can be used as the basis for tracking the progress of ongoing cases and the relevant procedures, identifying the issues and finding solutions.

Cooperation with other governmental and non-governmental bodies:

Tackling organised crime is not only problem of LEAs, it is a joint responsibility for the government, the non-governmental sector, society and individual citizens together. On one hand, tolerance by society and informal support can block activities intending to disrupt criminal organisations. In Kosovo for



instance, EULEX Kosovo has organised public awareness campaigns encouraging witnesses to crimes to come forward. On the other hand, even indictments to members of OCGs do not necessarily lead to a guilty verdict, nor to the end of the criminal organisation. Political interference in ongoing judicial cases is a problem in many host countries.

EULEX Kosovo encouraging crime witnesses to come forward

46 UNODC: *Criminal Justice Assessment Toolkit*, New York 2006, available at: https://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/CJAT_Toolkit_full_version.pdf

A holistic approach is advisable in order to form a strong response to organised crime. A CSDP mission is well placed to initiate and facilitate dialogue between LEAs and other governmental actors as well as non-governmental actors:

<i>LEAs' cooperation partner</i>	<i>Examples of possible actions</i>
Government agencies: tax authorities, various licensing agencies (e.g. for driving, possession of a firearm), utility providers, the intellectual property agency, the trading standards office, the health and safety office.	OCG members were smuggling cocaine to the host state's airport by light aircraft – the Civil Aviation Authority was requested to remove their access to aviation transport routes.
Businesses and the private sector	Information sharing between the police and an insurance company led to the arrest of OCG members involved in fraud schemes claiming false vehicle thefts.
Civil society and local authorities	Due to the high number of teenagers involved in OCG activities, schools and local authorities were requested to assist in deterring people from becoming drawn into organised crime.
Media	ATMs were being stolen by an OCG using a new modus operandi, ramming the ATM out of its foundations with a stolen SUV and speeding away within seconds. A public media campaign was launched in order to raise awareness of this and to encourage citizens to report suspicious activity.

In some cases, both governmental organisations and NGOs can be integrated into the inter-agency task forces. A good illustration of cooperation between public institutions is the Government Agency Intelligence Network (GAIN) in the UK, which 'is a multi-agency group that brings together intelligence and investigation staff mainly, but not exclusively, from public sector enforcement agencies'⁴⁷. GAIN has a full-time coordinator based within every ROCU. GAIN provides a mechanism through which police can access a whole range of information and data on individuals to which they would not have otherwise had access. Moreover, it provides for opportunities to put pressure on OCG members, working as a deterrent or preventive mechanism. In some countries, NGOs can be active in the field of fighting organised crime and their support should be encouraged whenever possible. **Out-of-the-box solutions**, initiatives and options to disrupt criminal organisations, even daring and ambitious ones, should be discussed between all stakeholders and encouraged.

47 For more information: <https://www.wmrocu.org.uk/home/wm-gain.aspx>

Examples: Through the ‘Making the gangs good’ initiative, the government in Ecuador acknowledged the well-known gang ‘the Latin Kings’ as a cultural and social organisation in 2006. Measures helping integration to society – such as grants and providing employment opportunities for gang members – had a huge impact on the decriminalisation of the Latin Kings.⁴⁸

In Finland, thanks to an initiative launched by the National Bureau of Investigations in 2018, those wishing to leave an OCG get individualised and tailor-made ‘exit’ support, for instance, support in finding ways to ensure personal safety and strengthening healthy social networks.⁴⁹

2.3.4. The role of civil society and the media

A *whole-of-society approach* in the fight against organised crime highlights that entities organised for criminal purposes are best countered with the support of local groups organised for civic purposes. There are valid reasons why advisers on organised crime should limit contact with **CSOs** and journalists. First, the CSDP mission is most likely to focus its activities on cooperation with the official authorities rather than implementing projects with the non-governmental sector. While the civic field does not enjoy freedom of expression, reaching out to civil-society experts or journalists may even seem a waste of time. Expertise on how to work with local NGOs in a politically-sensitive manner is also necessary so that the broader goals of the mission are not threatened. In some missions, a designated civil-society adviser may exist but she or he may not have the relevant expertise on supporting advisory projects on fighting organised crime. Finally, the level of distrust of outsiders, especially in more traditionalistic and isolated societies, may create another barrier.

The long-term benefits of engaging with civil society actors and media representatives as an additional activity are however undisputable. First, communicating with local civil society experts and reputable journalists allows the information obtained from the official sources to be complemented. Secondly, cooperation with civil society experts and the media is important in order to ensure public support for reforms. These activities need to be planned and implemented with the mission’s civil society adviser as well as with press and public information staff.

48 The BBC’s “‘Can you make gangs good?’ the Inquiry’ podcast is available at: <https://www.bbc.co.uk/programmes/w3c3sytfw>

49 Poliisi (the Finnish Police), Järjestäytyneen rikollisuuden torjunnan käsikirja, 2019, p. 31, https://www.poliisi.fi/instancedata/prime_product_julkaisu/intermin/embeds/polisenaxwwwstructure/79346_JR-kasikirja_netiversio.pdf?bbe1899d20b4d688

Example: OCGs have been perpetrating street violence on a massive scale in Venezuela. The NGO Observatorio Venezolano de Violencia (Venezuelan Observatory of Violence) was established in 2005 and has been publishing regular detailed reports about the incidence of street violence, including politically motivated cases. According to its statistics, there were 81.4 violent murders per 100 thousand inhabitants of Venezuela in 2018,⁵⁰ which is more than double the per capita number of civilian casualties of the Syrian war in 2018. This violence often happens with the tacit approval of local LEAs. For example, street gangs called colectivos are often affiliated with the Maduro regime and receive cover and support from the police to attack peaceful protestors against the regime. To understand the current situation, a foreign adviser would naturally approach the Observatorio Venezolano de Violencia, who have been studying and documenting the OC in the country systematically for the past several years. The level of trust of ordinary Venezuelans in the policy prescriptions of this civil society is also likely to be higher than the trust they have in representatives of the LEAs, which is implicated on by human-rights abuses and widespread cooperation with the members of OCGs.

The international community has only recently started to grasp the increasing role of civil society actors in fighting organised crime. The UNODC has invited a number of CSOs in its internal working groups, such as the Commission on Narcotic Drugs and the Commission on Crime Prevention and Criminal Justice.⁵¹ A relatively new initiative is the civil society resilience fund against organized crime, launched by the Global Initiative Against Transnational Organized Crime and the Norwegian Ministry of Foreign Affairs.⁵² The resilience fund is designed to counter the impacts of organised crime by supporting civil society and non-state actors in organised crime-affected areas by providing them with grants and technical assistance. This action-focused fund complements the previous joint initiatives of CSOs, such the Civil Society Observatory to Counter Organized Crime in South Eastern Europe, which has mostly focused on collaborative research.⁵³

Working with civil society representatives, just like working with official authorities, relies on mutual trust. First one needs to identify the CSO members with relevant experience and genuine motivation to cooperate. Trust can be built by first holding a closed-door meeting at the mission to understand what the CSO leaders expect from the authorities as well as from the mission. Once common ideas are found, the mission can facilitate dialogue between these experts and law enforcement actors, encouraging their inclusion in working groups on strategy planning, legislation drafting or in joint activities. The mission can also help in the joint publishing of agreements and results in social media for instance.

50 Observatorio report 2018, available at: <https://observatoriodeviolencia.org.ve>

51 See the UNODC web-site for more details: <https://www.unodc.org/unodc/en/ngos/Civil-Society-partners.html>

52 See the press release on the official web-site of the Global Initiative: <https://globalinitiative.net/resilience-fund-norway/>

53 See the observatory's 2018 report on organised crime-related challenges: <https://globalinitiative.net/wp-content/uploads/2019/05/Hotspots-Report-English-13Jun1110-Web.pdf>



How to work with CSOs

On the one hand, local journalists may be an excellent source of information that is often not available to LEAs. Real-life examples provide useful supportive arguments for advisory work. For example, a number of high-visibility cases on organized crime involving corruption have been initiated by Ukrainian LEAs based on the publications of local media. Regional media sources in Ukraine have uncovered the involvement of organised crime in the illicit extraction of amber in the north-west of the country and the illegal logging of woods in western and southern Ukraine. Without such open source information, it would be hard to understand the regional dimension of organised crime in a large country like Ukraine.

On the other hand, however, these investigative media organisations may get into conflict with the local authorities, for example, because of the law enforcement's collusion with organised crime or corrupt politicians. With the growing number of Internet users and the impact of social media on local politics, journalists working on organised crime garner larger audiences and face more risks to their personal safety. In this case, the local authorities may be unlikely to accept the information that an adviser receives from investigative journalists as a basis for decision-making. A particularly complicated situation may arise when there is an open retaliation from organised crime leaders against journalists investigating them without any visible reaction from the law enforcement. It is crucial for any CSDP staff member to remain realistic, within the mission mandate, and not to give false promises or raise expectations of the mission's capacity to provide protection to whistle-blowers or journalists or give assurances that an investigation of specific cases will be taken forward. It is up to the mission's management to decide how to formulate political pressure and recommendations for the national beneficiary. Often, in such cases, political guidance is needed from the EU Delegation. The head of mission can take up sensitive issues in her or his bilateral meetings with the leaders of LEAs.

Recent years have seen a true boom in the cross-border networking of **investigative journalists** working on organised crime. Below some examples of these initiatives:

The name of the organisation	Country (or countries)	The focus of activities	Website
Global Investigative Journalism Network (GIJN)	An international network	Information sharing and training	gijn.org
Organized Crime and Corruption Reporting Project (OCCRP)	An international network (involving 45 non-profit organisations)	Joint cross-border investigations	occrp.org
Europe			
Crime and Corruption Reporting Network (KRIK)	Serbia	Investigations; a database of OC murders since 2012	Krik.rs
Balkan Investigative Reporting Network (BIRN)	Bosnia; Kosovo	Cross-border investigations	Birn.eu.com
Center for Investigative Journalism in Montenegro (CIN)	Montenegro	Public-interest reporting; media freedom protection	cin-cg.me
Nashi Groshi ('Our money')	Ukraine	Focus on public corruption	Bihus.info
Investigative Journalism Centre	Moldova	Corruption-related stories	investigatii.md
Latin America			
Centro de Investigacion de la Comunicacion	Nicaragua	Publishes quarterly bulletins on security situation	
Africa and Asia			
International Centre for Investigative Reporting	Nigeria	Focus on reporting violent crime and corruption	icirnigeria.org
INK Center	Botswana	Investigative journalism	inkjournalism.org
PAYK Investigative Journalism Center	Afghanistan	Support to investigations, media freedom protection	paykreports.com

2.4. The international dimension

Transnational character remains one of the key features of modern organised crime. This requires national, regional and international actors to work closely together on developing efficient rules, procedures and mechanisms for a coordinated response to organised crime. At the same time, CSDP missions are launched in (post-)conflict regions where other EU actors and international donors are also actively supporting peacebuilding and/or security sector reform. Efficient donor coordination is crucial to ensure effective aid delivery, and prevent overlapping projects and donor shopping. These two aspects and the challenges they pose need to be taken into account when advising local counterparts.

2.4.1 International police cooperation

National police structures cooperate through international organisations, and formal and informal networks, as well as cooperating directly with the LEAs of specific countries. Bilateral cooperation between LEAs can also be organised through police liaison officers (usually seconded in an embassy). For cross-border operations, precise procedures are in place and, for more strategic-level cooperation, international mechanisms have been set up. In Europe, the Prüm Convention, signed in 2005, stepped up cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration, allowing police authorities from signatory countries to exchange data regarding the DNA, fingerprints and vehicle registrations of concerned persons. In 2018, the convention was expanded to the Western Balkans.

INTERPOL is a global intergovernmental organisation with 194 member countries. Its aim is to (1) 'ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the "Universal Declaration of Human Rights"' and (2) 'to establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes'.⁵⁴

More specifically, the role of INTERPOL in regard to the organised crime area is outlined in the Global Strategy on Organized and Emerging Crime (2016–2020).⁵⁵ In particular, one of the two declared key goals is to enable member countries to target and disrupt transnational criminal networks. From its side, INTERPOL commits to provide assistance within the following areas:

54 INTERPOL, *Constitution of the ICPO-Interpol*, Vienna 1956, available at: <https://www.interpol.int/Who-we-are/Legal-framework/Legal-documents>

55 INTERPOL, *Global Strategy on Organized and Emerging Crime*, Lyon 2017, <https://www.interpol.int/en/content/download/5582/file/Global%20Strategy%20on%20Organized%20and%20Emerging%20Crime.pdf>

- the identification of criminal networks
- illegal trafficking and illicit markets
- enabling crimes and criminal convergence (identifying links between seemingly unrelated types of crimes and how one crime can be used to support another, and assisting police in preventing such enabling crimes from leading to greater criminal activity)
- illicit flows of money and assets

In fact, a specialised organised crime unit of INTERPOL aims to identify persons involved in transnational crime, the associated criminal networks and their activities with the ultimate objective of stopping criminal organisations from operating. This unit conducts criminal analysis based on intelligence provided by member countries and partners. This intelligence enables INTERPOL to get a strategic picture and identify linkages between members of OCGs. Moreover, the organised crime unit is in charge of different projects which focus on specific types of criminal networks (such as Project Millennium for Eurasian organised crime⁵⁶ and Project Fortaleza for Latin American organised crime⁵⁷).

From the operational point of view, in each country a National Central Bureau (NCB) serves as the point of contact for the General Secretariat of INTERPOL, as well as for other NCBs. It is useful for a CSDP mission to ensure contact with the NCB in the host country.

Another crucial organisation for police cooperation is the **European Union Agency for Law Enforcement Cooperation (aka Europol)**. It is an EU law enforcement agency, tasked to support both EU Member States and partner states, as well as international organisations, in their fight against terrorism, cybercrime and other serious crime and organised forms of crime. Europol is a multi-functional organisation which serves as a support centre for law enforcement operations, a hub for information analysis and sharing on criminal activities, and a centre for law enforcement expertise. The exchange of sensitive information between Member States and partners is done through the Secured Information Exchange Network Application, better known as SIENA. Europol analysts go through large amounts of information on crime and terrorism, and produce such key assessments as the EU SOCTA, the EU Terrorism Situation and Trend Report (TE-SAT), and the Internet Organised Crime Threat Assessment (iOCTA).

On the operational level, Europol supports over 40,000 international investigations each year – tactically, technically and financially. In terms of OC, the European Serious and Organised Crime Centre (ESOCC) remains the most relevant structural unit of Europol. It is responsible for seven out of the ten key priorities in the fight against OC and serious international

56 For further details see: <https://www.interpol.int/en/Crimes/Organized-crime/Project-Millennium>

57 For further details see: <https://www.interpol.int/en/Crimes/Organized-crime/Project-Fortaleza>

crime as adopted by the Council of the Justice and Home Affairs Ministers for 2018–2021.⁵⁸ In particular, the centre provides operational support to prioritised cases including criminal intelligence analysis, on-the-spot and real-time information exchange and expertise, and operational capabilities support. To prioritise activities, the key focus has been on the high-value targets of criminal networks. Similarly, a newly established task force also bringing together liaison officers from Member States and coordinated by Europol's European Migrant Smuggling Centre (EMSC) focuses on intelligence-led coordinated action against criminal networks involved in migrant smuggling and the trafficking of human beings.

Europol follows an SOP for the criteria for the prioritisation of cases as well as for choosing the high-value targets, those persons creating the highest threat to Member States in the field of organised and other serious crime. The SOP prepared together with the Member States also defines the process for establishing an operational task force. The Europol Analysis System (EAS) allows for the collection, storing, processing and analysis of information related to personal data and operative details, and it ensures both up-to-date situational awareness and an accurate intelligence picture, and thus relevant operational support. Europol may receive and process personal data from third countries insofar as it is necessary and proportionate for the legitimate performance of its tasks. Transferring personal data to third countries is based on an operational agreement. Exceptionally, Europol's Executive Director may authorise the transfer of personal data to third countries without an operational agreement on a case-by-case basis if the transfer is essential based on the justifications provided in the Europol Regulation.

There is a genuine political will in Brussels and among Member States to enhance cooperation between CSDP missions and Europol. On the HQ level, different cooperation agreements between the EEAS and JHA agencies, such as the exchange of letters between the EEAS and Europol, provide the strategic framework for cooperation. Regular meetings take place. The EEAS mini-concept for tackling organised crime,⁵⁹ discussed with the Member States in summer 2019, highlights that CSDP–JHA cooperation could increase the effectiveness of the EU's actions. Similarly, the Europol programming document 2019–2021 contains particular provision for strengthening cooperation with CSDP missions and operations:

58 For further details see: <https://www.europol.europa.eu/empact>

59 Food for Thought and Mini-concept on Organized Crime, 2019, op. cit.

The European Council conclusions of 19 October 2017 called for enhanced information exchange between JHA Agencies and CSDP missions and operations. Furthermore, the Council conclusions on strengthening civilian CSDP of 28 May 2018 called for increased coherence and cooperation between civilian CSDP and actions undertaken by the EU in the external dimension of Justice and Home Affairs, as well as for fostering synergies between the CSDP and JHA actors on the operational level to increase information exchange. Europol considers civilian CSDP missions and operations as useful means to gather criminal information and to facilitate contacts with local authorities and views positively an early consultation of JHA actors in the planning phase of CSDP missions.⁶⁰

Despite encouraging policy documents, in practice, many initiatives still lie in the mission's hands. First, the adviser should find out the legal basis for the cooperation of the host country with Europol. There are actually three main forms for such cooperation when it comes to non-EU member states. These are operational agreements, strategic agreements and working arrangements. While operational agreements are mainly used for the regulation of cooperation with individual countries, strategic agreements predominantly govern the relations with EU institutions and agencies, as well as with international organisations. Both types of agreement are aimed at enhancing cooperation, but there is one major difference: strategic agreements are limited to the exchange of general intelligence as well as strategic and technical information whereas operational agreements allow for the exchange of information, including personal data. At the same time, a working arrangement remains the less typical form of cooperation. A CSDP mission is in a key position to support building bridges between the host country and Europol if necessary.

Secondly, an adviser needs to explore the possibilities of cooperation between the mission and Europol. While for Europol, it would be very useful that intelligence obtained on organised crime and terrorism (including personal data) could be gathered and transferred to Europol by the CSDP mission's staff, this is rarely legally feasible. However, other types of contextual information gathered by CSDP missions could be useful for Europol's analytical work and such avenues for structured information gathering and cooperation can be further explored on the mission level. Europol would benefit from the partner countries that fill the necessary conditions and standards ensuring effective cooperation with Europol. In support, a mission can host Europol counterparts when on a duty trip in the host country or ask for advisory support when training a local beneficiary on standards such as SOCTA methodology. Training support can also be requested from **the European Union Agency for Law Enforcement Training (CEPOL)**, which is mandated to facilitate knowledge sharing on issues stemming from the EU Policy Cycle on serious and organised crime not only within EU but also in third countries (when a legal basis exists).

60 *Europol Programming Document 2019–2021*, The Hague 2019, p. 5, available at: <https://www.europol.europa.eu/publications-documents/europol-programming-document>

Police liaison officers form another effective tool for facilitating international and cross-border cooperation and coordination when combating organised crime.

The EU defines a liaison officer as ‘a representative of one of the Member States, posted abroad by a law enforcement agency to one or more third countries or to international organisations to establish and maintain contacts with the authorities in those countries or organisations with a view to preventing or investigating criminal offences.’⁶¹

Liaison officers may hold regular coordination meetings to exchange information. Usually it is possible for a CSDP adviser to attend such meetings or initiate thematic meetings dedicated to organised crime and related issues. To establish contacts with the police liaison officers in the host country, the coordination and cooperation section (if it exists) or the political section of the mission will have the necessary contacts in the foreign embassies. Such a list of the police liaison officers deployed in the host country, including their contact details, is useful for the whole mission. It is common for LEAs to not have such data compiled and well systematised. Close contacts with police liaison officers may be useful when providing advice to national stakeholders or exerting international pressure for a reform process.

The host country’s LEAs may have liaison officers posted abroad. Finding out basic information about those officers (the seconding agency, the country of employment, the duration of secondment, the mandate) provides the adviser with an understanding of the host country’s priorities. Discussions with the seconding agency representatives provide information on the usefulness and effectiveness of the liaison officers delegated abroad, in particular with regard to the fight against organised crime.

Recommendations for evaluating police cooperation in the host country:

- ✓ Find out basic information on the structural unit in charge of international police cooperation (e.g. the number of staff and subordination) and the NCB.
- ✓ Find out whether there is a designated person (or persons) specifically responsible for the organised crime sphere.
- ✓ Assess the availability/quality/completeness of the statistical data on information exchange.
- ✓ Assess the host country’s engagement in bilateral, multilateral and international operations.
- ✓ Ask about contribution to international analytical products and reports (e.g. Europol’s SOCTA).

61 Council Decision 2003/170/JHA of 27 February 2003

2.4.2 International legal cooperation

International legal cooperation is a formalised and standardised way of interacting between different national jurisdictions in terms of investigating criminal cases or of the execution of verdicts. Such cooperation is related to extradition, mutual legal assistance, the transfer of criminal proceedings and convicted persons, the recognition of the decisions of foreign criminal jurisdictions and the freezing or seizure of assets as well as other cooperation between LEAs.

International conventions and treaties serve as a basis for international legal cooperation (see the recommendations in Section 1.3). After revising the state of play with the ratification and implementation of the key conventions and treaties in the host country, it is useful to review bilateral agreements,⁶² in particular those related to organised crime. Such agreements can provide additional instruments for cooperation and the exchange of information.

In addition to the international legal framework, it is essential to analyse the national legislation regulating international legal cooperation. Commonly, such provisions are within criminal procedure legislation. The main provisions of the national legislation can provide for more specific rules and procedures.

An example of quick analysis of the national legislation

According to the Criminal Procedure Code of Ukraine, a mutual legal assistance (MLA) request shall be executed within one month from the date of receipt by the designated authority. This deadline can be extended if complex and large-scale procedural actions are requested, including ones which require the approval of a prosecutor or the ruling of an investigating judge.⁶³

It is also advisable to explore the mechanisms of the international legal cooperation of the host country with the EU Member States, in particular through the **European Union's Judicial Cooperation Unit** (aka Eurojust)⁶⁴ as well as with the European Public Prosecutor's Office,⁶⁵ which will take up its functions by the end of 2020.

62 See *Council of Europe List of Bilateral and Multilateral Regional Treaties Binding Council of Europe Member States*, Starsbourg 2018, available at: <https://rm.coe.int/08inf-bil-rev-7-list-of-bilateral-and-multilateral-treaties-binding-co/16808ea888>

63 Paragraph 2, Article 558, available in Ukrainian at: <https://zakon.rada.gov.ua/laws/show/4651-17>

64 Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (ref. 2002/187/JHA), available at: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32002D0187>

65 The Council Regulation (EU) of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (ref. 2017/1939), available at: <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>

Eurojust was established to improve judicial cooperation between the Member States, particularly in combating all forms of serious crime, often perpetrated by transnational organisations. Eurojust facilitates coordination and cooperation between national investigative and prosecutorial authorities. A relevant bilateral agreement commonly forms the legal background for Eurojust cooperation with third countries. This document provides rules and procedures for information exchange, including personal data, as well as the secondment of liaison prosecutors to Eurojust.

The example of Montenegro

Montenegro signed a cooperation agreement with Eurojust on 3 May 2016.⁶⁶ In accordance to the document, Montenegro seconded a liaison prosecutor to Eurojust with the task of facilitating judicial cooperation between the competent authorities of the Member States and Montenegro.

Eurojust is a unique hub which accommodates both representatives of all EU Member States and liaison magistrates from those countries which have signed cooperation agreements with Eurojust. This provides it with the capability to support investigations and prosecutions either within or outside the EU.

From a practical perspective, upon request of one or more Member States, Eurojust can provide assistance with establishing a Joint Investigation Team. Depending on the situation in the host country, the CSDP adviser can bring this up as one of the potential directions for strategic advice in terms of international cooperation on organised crime investigations. In such a case, the specific support that could be rendered by Eurojust for JITs should be highlighted:

- assessing the suitability of establishing a JIT
- assistance in drafting the JIT agreement
- legal and practical support throughout the lifetime of the JIT, including support to joint operations
- the coordination of investigative and prosecutorial strategies
- the settlement of jurisdiction
- financial support (e.g. to cover translation costs, travel expenditure for JIT members)

⁶⁶ Available at [http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/agreements/Agreement%20on%20cooperation%20between%20Eurojust%20and%20Montenegro%20\(2016\)/Eurojust-Montenegro-2016-03-05-EN.pdf](http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/agreements/Agreement%20on%20cooperation%20between%20Eurojust%20and%20Montenegro%20(2016)/Eurojust-Montenegro-2016-03-05-EN.pdf)



Eurojust focuses on international cooperation. Source: Eurojust 2019.

A letter of understanding between the EEAS and Eurojust frames the cooperation between CSDP missions and Eurojust.⁶⁷ This document sets a framework for the regular exchange of non-operational strategic information and experience, particularly in the areas of counter-terrorism, cybercrime, illegal immigrant smuggling and trafficking in human beings. This allows for secondments, visits, trainings, research on trends and challenges, as well as giving the CSDP mission the possibility to facilitate contacts with third states. A CSDP adviser can identify ways to rely on Eurojust support in matters related to organised crime.

⁶⁷ The letter of understanding was co-signed by Michèle Coninx, President of Eurojust, and Pedro Serrano, Deputy Secretary-General for Common Security and Defence Policy (CSDP) and Crisis Response of the European External Action Service (EEAS), in The Hague on 10 October 2017.

Recommendations for understanding international legal cooperation with regard to organised crime investigations and its efficiency:

- ✓ Get familiar with the number of MLA requests sent and received.
- ✓ Discover the challenges faced by the host country's authorities when using the MLA instrument (e.g. no response, excessive time for execution, incomplete execution).
- ✓ Find out the number of joint investigation teams and their outcomes.
- ✓ Find out the number of international operations (e.g. cross-border observations, controlled deliveries, parallel investigations).
- ✓ Ask about extradition requests (sent and received).
- ✓ Ask about asset freezing and confiscation requests.

2.4.3. The EU's integrated approach and donor coordination

In addition to the above-mentioned formats of CSDP–JHA cooperation, CSDP missions may cooperate, for instance, with the **European Gendarmerie Force** (EGF) or with the **European Border and Coast Guard Agency** (EBCGA; aka Frontex). Frontex's new mandate and increased resources have transformed it into the operational arm of the EU at its external borders. Its around 1,500 officers are deployed at the EU's sea, land and air borders and, in the case of an emergency, more officers are available at short notice. Frontex has an extensive information-gathering mandate and its network of liaison officers ensures an information flow for up-to-date risk analysis. Frontex cooperation with third countries is not limited to the neighbourhood. Liaison officers are also deployed in countries of origin and transit. In some host countries, the fight against organised crime is closely linked with human trafficking and thus close coordination with Frontex is essential.

Other international partners or networks that may provide useful recommendations and best practises include the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)⁶⁸ and the Financial Action Task Force (FATF)⁶⁹ on money laundering, and the Organisation for Economic Co-operation and Development (OECD)⁷⁰ and GRECO⁷¹ on corruption. The Camden Asset Recovery Inter-agency Network (CARIN),⁷² the Consultative Council of European Prosecutors (CCPE)⁷³, the West African Central Authorities

68 <https://www.coe.int/en/web/moneyval>

69 <https://www.fatf-gafi.org/>

70 <http://www.oecd.org/>

71 <https://www.coe.int/en/web/greco>

72 <https://www.carin.network/>

73 <https://www.coe.int/en/web/ccpe>

and Prosecutors against Organized Crime (WACAP⁷⁴) and the Network of Organized Crime Prosecutors (REFCO⁷⁵) in Central America are examples of formal, semi-formal or informal networks. It is important to be informed of the regional initiatives and networks in which the host country cooperates. For instance, in the Balkans the EU has been funding the second pillar of the Integrative Internal Security Governance (IISG), the Western Balkan Counter-Serious Crime initiative (WBCSCi), which aims at merging the efforts of all the relevant security actors in the beneficiary countries, the EU and international donors in tackling organised crime.⁷⁶

The EU Global Strategy for its foreign and security policy identifies the **integrated approach** as the framework for a more coherent and holistic engagement by the EU with external conflicts and crises. This was reiterated by the Council Conclusions of 22 January 2018 that highlighted that there is a need for an integrated effort at all stages of the EU response, from planning to implementation and lesson learning.⁷⁷ All EU instruments, such as CSDP missions and EU Commission–funded projects, need to be deployed in a coherent manner so that unnecessary duplication is avoided in the host country.

Within a CSDP mission, the coordination and cooperation section or another unit to whom these responsibilities are assigned should have a general picture of all mission mandate–related international projects. These can be funded by different EU Commission instruments, such as the Instrument contributing to Security and Peace (IcSP) or development funds. EU Member States may have bilateral projects ongoing to support the host country. Other international partners may be implementing EU-funded projects, such as the UNODC, the United Nations Office for Project Services (UNOPS), the United Nations Development Programme (UNDP), UNICEF, Red Cross, the OSCE Project Coordinator, INTERPOL and many others. The same international organisations may also implement projects from other funding sources. The United States of America and Canada are also major donors and active in the field of the civilian security sector. The key American partners as regards organised crime are the US Department of State’s Bureau of International Narcotics and Law Enforcement Affairs (INL) as well as the International Criminal Investigative Training Assistance Program (ICITAP), situated in the Department of Justice’s Criminal Division. ICITAP receives funding for its programmes from the US Department of State, the US Agency for International Development (USAID) and the US Department of Defence. The FBI may also have liaisons in the host country.

74 <https://www.unodc.org/unodc/en/organized-crime/gptoc-wacap.html>

75 <https://www.unodc.org/ropan/en/REFCO/refco.html>

76 <https://wbcsci.wb-iisg.com/>

77 Council Conclusions January 2018, available at: https://ec.europa.eu/europeaid/january-2018-council-conclusions-integrated-approach-external-conflicts-and-crises_en

Local counterparts may be confused facing the EU and the international community, represented by so many different actors which sometimes even provide contradictory advice. Donor coordination is thus crucial to ensure a coherent approach to the reform process as well as to avoid ‘donor shopping’ (when the beneficiary turns to the donor that provides the easiest support with the least requirements or conditions attached). Coordination can take place on several levels. The head of mission regularly meets his or her international counterparts. The EU family (including the EU Delegation, CSDP missions and the different EU-funded projects) has separate coordination structures. Political coordination in the host country is always ensured by the head of the EU Delegation. Local authorities may host different coordination platforms. Several thematic coordination structures may or should exist, including one for CSSR. In Niger, the Platform for the Exchange and Analysis of Data on Migration Flows in Niger is an excellent example of coordination⁷⁸. On the adviser level, also ad hoc and more informal networks should be established between the key stakeholders of different international organisations and projects in order to exchange information on ongoing and planned activities.

Lessons on Integrated Approach from EUAM Ukraine

EUAM Ukraine was designed to ensure that its plans and actions are fully in line with the EU’s comprehensive support to Ukraine. The mission’s coordination and cooperation section holds an up-to-date donor map of all mandate-related projects in Ukraine and regularly hosts several donor coordination platforms such as the Thematic Working Group on Law Enforcement. Some of the EU Commission-funded projects are co-located with the mission, such as the EU Anti-Corruption Initiative (EUACI), which eases the identifying of joint activities. With the EU Commission-funded and UNOPS-implemented PRAVO special measure, providing technical assistance to the LEAs, the mission has identified a way to programme the support together through jointly prepared support packages. The first such support package approved was on organised crime. This ensured that the mission’s expertise was included in the planning of the assistance and, despite the mission and the project having the same beneficiaries, overlap of any supportive activity was avoided. While Americans were also interested in supporting the fight against organised crime, the mission ensured that the EU support was complementary to the US-funded assistance. In the future, cooperation with JHA agencies, especially Europol and Frontex, could be further enhanced.

⁷⁸ It is composed of EU institutions, EU migration liaison officers and security liaison officers posted in Niger and the Nigerien authorities, which have the leading role. EU Delegation ensures its technical secretariat.



Photo by EUAM Ukraine

The handover of technical support procured by the PRAVO project to the leadership of the Ukrainian Strategic Investigations Department by Martin Klaucke from the EU Delegation and Kestutis Lancinskas from EUAM Ukraine on 18 September 2018.

Recommendations:

- ✓ In your mission find out who is following the donor coordination and keep yourself up to date on the relevant international projects in the field of criminal investigations and the fight against organised crime in order to avoid any overlap or contradictory advice. Information flow is a two-way street: keep your coordination colleagues informed of any new projects your international partners may tell you about.
- ✓ Build working connections with the EU Delegation (e.g. with programme managers in the field of rule of law) and the project managers of the EU-funded projects in your field as well as other key international stakeholders, such as INL and ICITAP representatives at the US embassy. You may be able to find synergies and possibilities to work together or to push through key reforms jointly.
- ✓ Participate in the relevant donor coordination meetings to keep yourself informed about the international assistance within the host country. In this format, share information about the activities and advice you are involved in and/or are planning (or pass the message on to those who are participating if you cannot participate).

Key documents

Key international legal acts⁷⁹ related to organised crime:

UN Convention against Transnational Organised Crime (UNTOC) (and its protocols on human trafficking, migrant smuggling and trafficking of firearms), 2000

UN Convention against Corruption (UNCAC)

European Convention on Mutual Assistance in Criminal Matters, 1959

European Convention on the Suppression of Terrorism, 1977

European Convention on Cybercrime, 2001

Convention on the Prevention of Terrorism of 2005 and its Additional Protocol, 2015

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 2005

Council of Europe: Convention on Action against Trafficking in Human Beings, 2005

Council of Europe: Recommendation Rec(2000)19 of the Committee of Ministers on the Role of Public Prosecution in the Criminal Justice System

Council of Europe: Recommendation Rec(2012)11 of the Committee of Ministers on the Role of Public Prosecutors Outside the Criminal Justice System

Key EU documents:

Council of the European Union: Council Framework Decision 2008/841/JHA, 24 October 2008 on the fight against organised crime', Official Journal of the European Union, L 300/42, 11 October 2008.

EU High Representative: Shared Vision, Common Action: A Stronger Europe – A Global Strategy for the European Union's Foreign and Security Policy, June 2016.

Council of the European Union: Council conclusions on implementing the EU Global Strategy in the area of Security and Defence, ref 14149/16, 14 November 2016.

Council of the European Union: EU Policy Cycle Terms of Reference, ref. 10544/2/17, Brussels 2017.

Europol: The European Union (EU) Serious and Organised Crime Threat Assessment (SOCTA) Report – Crime in the Age of Technology, European Police Office, 2017.

European External Action Service: Strengthening Civilian CSDP – concept paper, ref. 8084/1818, April 2018.

Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the establishment of a Civilian CSDP Compact, ref. 14305/18, 19 November 2018.

European External Action Service: Food for Thought and mini-concept on organized crime, LIMITE, ref. 9845/19, June 2019.

79 See the list on the UN web-site: <https://treaties.un.org/Pages/TreatyParticipantSearch.aspx?clang=en>

www.cmcf Finland.fi