

Summary

This final report is part of the Falcone project entitled 'The Identification and Prevention of Opportunities that Facilitate Organised Crime'. Four participating countries, namely Finland, Hungary, Italy and the Netherlands, have each drawn up a report in which 15 cases of organised crime are described and analysed. These descriptions are based on data from police files. The goal of this analysis is to reveal the interfaces between the legitimate and illegitimate environments and to generate possibilities for preventive action. These indications for possible preventive interventions are called 'red flags'. This final report comprises these 'red flags' from the four national reports and examines four selected topics in more depth: the role of public administration and local businesses, the legal professions, official and informal financial services, and forged official documents.

The preventive approach is not primarily aimed at the perpetrators of organised crime, but rather at the facilitating circumstances of organised crime. It addresses governments, civilians and enterprises and is an attempt to make them feel responsible for the prevention of organised crime. The message is actually quite simple: if criminal organisations are able to easily acquire or access resources, then the number of these resources have to be reduced, or made more difficult to acquire or access.

The findings of the national reports

The national reports identified various interfaces between organised crime groups and the legitimate environment, which are of vital importance to the existence organised crime. These contacts or 'red flags' are a threat to the legitimate environment, but they also offer opportunities for organised crime prevention. The interfaces identified in the national reports could be divided into three categories: the demand for illegal products and services from the licit environment, the abuse of facilitators in the licit environment and the availability of 'tools' in the licit environment. Three categories of preventive measures could thus be identified. The three categories will be briefly explained and illustrated with an example.

Firstly, the demand from the licit environment for illegal products and services forms a breeding ground for organised crime groups. A category of preventive measures is therefore aimed at reducing this demand. Here, it involves social and economic measures. After all, what is more effective than improving people's social conditions to prevent them from becoming involved in human smuggling, women trafficking and drug abuse? It is also possible to influence demand through legislation. The Dutch 'Benefit Entitlement (Residence Status) Act' (*Koppelingswet*) links social welfare to a person's residence permit which prevents illegal residence and the demand for illegal labour, which in turn influences the demand for human trafficking.

'Facilitators', persons whose knowledge or skills (professional or otherwise) enable organised crime groups to carry out their criminal activities, are another

kind of interface. These facilitators can vary from public officials, to professionals and other facilitators, e.g. transport companies, landlords, hotel owners, taxi drivers and bouncers. To prevent the abuse of these facilitators, the national reports suggest an increase in the awareness of such abuse and the defensibility of the facilitators. Codes of conduct and the screening of personnel are important elements preventing the misuse of their services and their knowledge. Moreover, legislation such as the exclusion of criminals from public tender is a tool which shields against criminal involvement in public administration. In the case of legal professionals, organisations can invoke disciplinary law, which allows them to take disciplinary action without the interference of government.

Thirdly, criminal groups make use of other opportunities or tools present in the licit environment. These tools include the infrastructure of the licit environment, such as transport facilities and financial services. In the prevention of organised crime, the aim should be to diminish the availability of these tools for criminal purposes. For example, authorities can prohibit the establishment of legal persons when indications of a criminal past or affiliation exist. Anti-money laundering measures can be taken, however, governments should realise that they could lead to a displacement, that is, that alternative financial services and countries would be used, so safeguards also need to be taken to prevent this from happening.

In addition to these three categories of interfaces between the legitimate and illegitimate environment, the findings of the national reports gave rise to a close study of four important topics in this final report: the role of public administration and local businesses, legal professions, official and informal financial services, and forged official documents. With regard to each topic we discuss the facilitating opportunities, the measures that already have been taken and the possibilities of preventive action.

The role of public administration and local businesses

In order to conduct activities such as money laundering and the transport of illegal goods, criminal organisations depend on local government for obtaining permits and granting projects, and on the cooperation of local businesses. The key problem is the intermingling of legitimate and illicit worlds. These interfaces exist in the involvement of local businesses, which is a common phenomenon, and in corruption, which problem varies for each country. Preventing organised crime can therefore only be successful when businesses and governments possess a sufficient level of integrity. Existing measures therefore concern the integrity of public administration and local businesses, and the protection from abuse by external contacts.

The examples of best practice illustrate the importance of sharing relevant and reliable information, improving cooperation and increasing the responsibilities of all the parties concerned. With regard to the involvement of public administration, the 'administrative approach' in Amsterdam is a good example.

As a result of this approach, action is being taken on three fronts: in the integrity of the civil service apparatus, the screening of security processes concerning public tender procedures, and the infiltration of organised crime in certain areas and branches of industry in the city. The programme is a perfect example of an integrated and multi-agency approach in which the awareness of the risks of criminality are institutionalised in the entire bureaucratic and political organisation of Amsterdam. Furthermore, several agencies cooperate by sharing information and integral enforcement. With regard to business, the World Customs Organization provides successful cooperation between government and private entities on an international level. Such cooperation also takes place on local level. For example, in Rotterdam's main port, a risk assessment tool was set up by the authorities in association with various parties in the sea port's logistic chain. Moreover, in several countries the authorities have devised ways to supervise legal entities for fraud prevention purposes. To a large extent, these measures have not been especially established to prevent organised crime, but they are considered to be possible tools for that purpose. However, in some cases special regulations have been developed. In the Netherlands, the 'Vennoot' database system was set up to bring together relevant data on legal entities for crime prevention purposes.

Legal professions

The combination of financial and legal knowledge, and their aura of respectability and reliability, make lawyers attractive potential facilitators for organised crime. The involvement of a lawyer in a transaction can also create the impression of legitimacy. Moreover, the confidential nature of the lawyer/client relationship and the privilege of non-disclosure can be advantageous. It is important to emphasise that only limited empirical evidence exists on the involvement of lawyers in organised crime. In particular, the number of lawyers who actually perform acts for which they could be criminally prosecuted is very small. However, case studies show a number of lawyers rendering sophisticated forms of assistance by providing legal advice, credibility and facilities, which demonstrates the limitations of the notion that a lawyer is a person who merely defends their clients' cases in court.

Anti-money laundering laws are an important tool for preventing the involvement of lawyers. To a certain extent, the activities of lawyers have recently come under the scope of this legislation and they are therefore required to meet the disclosure obligation. These measures have far-reaching implications for certain specific professional rights, such as lawyer/client confidentiality and the privilege of non-disclosure, and they have been strongly opposed by members of the legal profession. However, the terrorist attack in the USA on 11 September 2001 fundamentally changed the situation and stifled the opposition of professional groups. The question is, however, what will be the effect of this new obligation to report unusual or suspect transactions. Up until now, the way in

which law enforcement agencies have used information on suspicious financial transactions has not been particularly promising as only a tiny percentage of reports of suspicious transactions have actually lead to an investigation, at least, this is the case in the Netherlands.

With regard to best practice, both law enforcement and self-regulation should be increased. In anti-money laundering laws, observing confidentiality should be greater in genuine criminal defence cases and less where the information being protected relates to a business transaction. However, it is questionable whether such a theoretical distinction in activities would be applicable in the daily practice of the legal profession. Lawyers are inclined to argue that a thin line can be drawn between a business consultation on the one hand and legal advice on the other, as it is quite possible that their business consultation may eventually lead to a civil law suit and a court appearance. More research is necessary to find out whether such a distinction would be tenable.

With regard to self-regulation, it is evident that it is both possible and desirable to draw up professional rules according to which lawyers are prevented from behaving in compromising ways in relation to organised crime. Disciplinary boards may investigate lawyers and impose disciplinary measures on those who violate the rules of integrity. However, due to these boards' lack of investigative facilities and their limited accessibility for outsiders – such as law enforcement agencies and prosecutors – the 'self-cleansing' capacity of professional organisations has transpired to be very limited. The limited strength of disciplinary boards has demonstrated that, up until now, self-regulation alone is inadequate. In this, the central issue is the 'know your customer' principle. Lawyers must consider who the client is, what the client wants, whether the request is unusual and why they have been chosen to perform these particular services. It may also be worthwhile implementing a system of 'trusted representatives', that is, the use of consultants who could provide professional advice.

Official and informal financial services

There are several methods of transferring money. It can be transferred physically across borders and official banks can be used. Though both methods are appropriated for criminal purposes, the first is neither safe nor fast and the second has become less safe due to anti-money laundering legislation. Criminal organisations therefore tend to use money transfers. A money or value transfer service is a financial service which enables customers to deposit cash, cheques or other valuable goods at one location and which pays a corresponding sum in cash or another form of remuneration to someone at another location. The initial operator charges the customer a fee or percentage of the transfer amount. Money transfers are fast and easy, and their only disadvantage seems to be the high costs involved. This service is offered by two alternative remittance systems: legitimate non-banking financial institutes and informal money or transfer systems

(‘underground banking’). These services have been allocated ‘red flags’ in the national reports. The question is whether registration systems and security standards for money transfer services should be implemented or not. Regarding legitimate non-banking financial institutes, MoneyGram and Western Union Money Transfer are the only examples which currently offer licit money transfer systems worldwide. It is likely that some criminals have assumed that money transfers do not leave a trail and are not reported to investigative and financial intelligence units. Although MoneyGram’s Internet document would certainly seem to support this, money transfer agencies are covered by anti-money laundering measures. The case studies indicate a weak spot in the fight against money laundering: monitoring and reporting are entrusted (under the threat of sanctions) to financial institutions who obviously have a commercial interest in not reporting suspicious transactions. It must be pointed out that the effectiveness of legislation not only depends on its presence, but also on the existence of a positive attitude in complying with the rules and the possibilities of enforcement: this is the difference between ‘law in theory’ and ‘law in practice’. The central issue of the informal money or value transfer (IMVT) systems is that money is transferred outside the conventional banking system which is supervised and monitored by the competent authorities. The most critical element in this informal system is the presence of trust. Without mutual trust existing between operators and clients, IMVT systems cannot operate. They are considered to be attractive for transferring the proceeds of crime as individual money transfers through IMVT systems do not leave paper trails, in theory at least. However, in the Netherlands it transpired that the absence of a paper trail is a well-preserved myth. Many IMVT operators do require their customers to provide identification and this information is even faxed to one another. Moreover operators not only settle their accounts by adding up individual money transfers, but they also make use of the conventional banking system. With regard to best practice, the question is whether IMVT systems should be dealt with in exactly the same way as other remittance systems. Basically, strengthening supervision and control could have two divergent effects. On the one hand, it could provoke non-banking systems – in particular IMVT agencies – to go further underground. On the other hand, it might result in a situation in which the use of IMVT will no longer be advantageous in comparison with money transfers. Moreover, improving the infrastructure of basic financial services may lead to the situation in which the current legitimate users of IMVT will opt for money transfer systems instead. In principle, two strategies can therefore be applied to money transfers. The first strategy simply involves a partial or full prohibition of money transfers by non-banking institutions. The second strategy concerns licensing the use of money transfers. A choice has to be made between prohibition or regulation and the latter option seems to be preferable. The FATF has recently developed a ‘special recommendation VI’ that brings all money or value transfer agencies (including ‘underground bankers’) within the ambit of the anti-money laundering regulations which already exist for the banking sector. However, opting for

regulation has its drawbacks. A regulatory system which is not backed up by adequate administrative control might lead to serious problems.

Forged official documents

Forged Bills of Lading enable drugs to be safely concealed in containers and forged identity documents enable illegal immigrants to enter and reside in Western Europe. The case studies demonstrate that false identity documents are frequently used and contact amongst criminal groups in the area of stolen and counterfeited documents is prevalent. Although it is impossible to estimate the number of false documents in circulation, the problem is serious and society's interest in carrying out proper identity checks is increasing.

During the last few decades, the vulnerability of passports to fraud has decreased immensely. However, technical improvements have also resulted in improved forgeries: even hallmarked paper or extra layers of laminate can be imitated. To prevent the use of forgeries, European countries have established a computer database entitled the Edison Document System. This database contains the hallmarks of over 1,500 travel documents from all over the world. In addition to these technological improvements, governments have also established other measures. For example, in recent years more attention has been paid to the safe storage of blank passports. Furthermore, several countries now link their databases so that governments are able to prevent people from obtaining official identity documents under the name of a deceased person, for example. Checking social security numbers can also reveal identity fraud.

With respect to best practices, the possibilities for prevention basically consist of extending the existing measures, namely the continuing development of the technical enhancement of identity documents. Almost two hundred countries throughout the world distribute over ten thousand different identity papers, such as visas, birth certificates and driver's licenses. This demonstrates how much the global community would benefit from national and international standardisation. Even though global standardisation is not feasible, a continuation of European standardisation is certainly achievable. However, the detection of false documents does not solely depend on the above mentioned technical instruments. Ultimately, the most crucial element in successful and effective prevention is the commitment of the people who are in charge of checking documents. Despite the fact that we have open borders, border checks are still an important instrument. Inhabitants from over a hundred and thirty countries are required to be in possession of a so-called 'Schengen visa' if they wish to be admitted to a country within the Schengen zone. The better inspectors do their work, the more forged documents will be identified. This entails the checking of documents by airline companies who are legally obliged to adequately inspect their passengers' identity documents in pre-flight checks.

Conclusion

In order to prevent organised crime from abusing opportunities facilitated by the licit environment, it is of vital importance that governments, businesses and legal professions properly conduct their tasks of supervision and carry out checks. They basically function as the gatekeepers of the licit world and therefore all they have to be is aware, well-informed and unafraid to make choices.

A small increase in awareness could reduce the facilitating factor considerably. For example, with regard to immigrants who receive welfare service flats, a sheer unawareness often exists of the rules which stipulate the conditions under which a third party can or cannot be accommodated. Awareness should, however, involve more than just being knowledgeable about something. It is therefore of great importance to adopt legislation and concrete facilities which help people who dare to take action, e.g. drivers who refuse to transport suspicious cargo should be protected from customers' claims. Furthermore, awareness is not something that can be taken for granted. The parties involved have to recognise the importance of being aware. This applies to airline companies who have to conduct pre-boarding flight checks, as well as tax authorities who have to take into account the fact that criminals may try to inflate their turnover and profits as much as possible in order to legitimise proceeds of crime. Awareness presupposes good governance and at the very least, the integrity of its agencies, otherwise the situational approach would be totally ineffective.

Prevention is a matter of thinking and acting in advance and it is therefore necessary that decision makers are well informed. It is important to systematically gather information on the phenomenon of organised crime itself. As this study demonstrates, case studies could reveal information regarding the abuse of facilitators or the availability of logistic facilities. Such a form of 'knowledge-based prevention' is therefore recommended. However, some problems in the exchange of information between the participants will be encountered in an integral and preventive approach towards crime. Each agency has its own means of collecting information. This affects cooperation, particularly between services with completely different backgrounds, e.g. judicial and administrative agencies. It would be desirable to set up an agency which has legal status and the authorisation to check applications for permits, tender proposals etc. on the basis of all types of databases, and with the authorisation to force companies to cooperate with the agency's investigations.

Finally, it is important to recognise that the existence of organised crime may be beneficial for some institutions who are therefore not interested in the fight against it. For example, a balance would have to be achieved between checking harbour imports and exports, and the economic interests of the rapid circulation of goods. The importance of economic interests would be reduced if the European Union would standardise checks and supervision. Another important aspect is the principle of confidentiality of certain professions. In short, if governments attach a great importance to the prevention of organised crime, this has to be reflected in them making clear and distinct choices.