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SOME REFLECTIONS ON THE STABILITY PACT INITIATIVE TO FIGHT ORGANISED CRIME

Introduction

The assassination of Serbian Prime Minister Djindjic in March 2003 showed the devastating role of organised crime in South Eastern Europe (SEE). International analysis and discussions with representatives from the region have confirmed that one of the most serious problems within the region is transnational organised crime. Terrorism's link to organised crime has been confirmed and condemned. The close connection of international terrorism to illegal arms and drug-trafficking and money laundering needs an adequate response: enhanced co-ordination of efforts on national, sub-regional, regional and international levels in order to strengthen a global response to this threat. The lack of coordinated action has enabled organised crime to reach devastating levels, undermining democratization, human rights, respect for the rule of law and trust in investment and reform efforts. The overall stability and sovereignty of SEE countries is endangered by organised crime groups who have infiltrated high level political positions, making identification, arrest and prosecution of their members even more complicated.

Ever since the feeling of urgency spread to tackle the issue of organised crime, various international institutions and agencies have developed solutions. This paper will elaborate on actions initiated by the Stability Pact's office for South Eastern Europe. It will redraw the history of the fight against organised crime, introduce its working structure and allied actors. It will also address the current obstacles in the development of a joint strategy which is ready for implementation.

History of the Stability Pact Initiative to fight Organised Crime (SPOC)

Over two years ago, the Special Coordinator of the Stability Pact for South Eastern Europe (SCSP) determined that support and assistance to SEE countries required coordination on multiple levels simultaneously. In order for such action to be undertaken as efficiently as possible, upon the decision of the Regional Table of the Stability Pact for SEE and under the framework of Working Table III, the Stability Pact Initiative to fight Organised Crime (SPOC) was created.

The overall objective of the SPOC initiative is to strengthen regional capacities to combat organised crime in accordance with internationally recognized standards. The initiative focuses on the adoption of policies, strategies and legislation, the development of multi-disciplinary interagency coordination mechanisms, encouraging the establishment of specialized units and the enhancement of regional and international co-operation.

In this respect, a Regional Steering Group and an Advisory & Contact Group, composed of high-level representatives of SEE countries and of representatives from the EU countries and institutions and from the international community were established. Governments of the region were asked to appoint representatives responsible for the implementation of the initiative in co-operation with key law enforcement and judicial authorities using a multi-disciplinary approach. Reviews of existing information on organised crime and meetings to discuss measures to counter organised crime followed. The final aim was to design needs assessments and country-specific priorities, work plans, technical assistance programs and measures to promote regional co-operation. This aim was not achieved by the time of the London conference in late 2002.

The London Conference

The necessity to fight organised crime in SEE was reaffirmed by the countries of the region at the London Conference against Organised

Crime by the adoption of the London Statement on Defeating Organised Crime in South Eastern Europe, which stated that the countries "will draw on the wide range of regional initiatives, including the Stability Pact for South Eastern Europe".

The London Conference Statement priority action includes:

- Legislative and institutional harmonization with European standards;
- Adoption of laws which help crime-fighting agencies to work more effectively;
- Ensure law enforcement agencies have proper technical means;
- Strengthening capacity for financial investigations;
- Implementing anti-corruption strategies;
- Build public support for action against crime;
- Improvement of regional co-operation.

Although not a binding treaty under public international law, the London statement recently gained higher value due to the conditionality between serious implementation and further European integration.

Stability Pact Initiative to fight Organised Crime working structures

Shortly after the Conference, the Stability Pact formulated concrete policies regarding the combat against organised crime and opened the SPOC Secretariat in Bucharest. In parallel, measures were initiated to simplify the existing working structures by merging the Regional Steering Group and the Advisory & Contact Group into a SPOC Board. In May 2003, the Head of the International Law Enforcement Cooperation Department of Austrian Federal Ministry of the Interior was elected chair of the SPOC Board.

The Stability Pact Initiative to fight Organised Crime Board

The board will normally meet approximately twice a year, with the next meetings scheduled for June and November 2003. The chair will invite representatives of the SEE states, principal IOs, the EU, major donor countries and NGOs active in the research field against organised crime. In general, the board is open to all actors who intend to commit their efforts to combat organised crime in SEE: representatives from the law enforcement community, the legal community, the academic world, regional expertise and the donor community. It is expected that the present composition will be broadened.

In order to gain an overview of all activities against organised crime in the Balkans, actors were approached which either did not play an active role so far or were not included at all. Among them were the Organization for Security and Cooperation in Europe (OSCE) and the United Nations Office on Drugs and Crime (UNODC). Additionally, the USA was called upon to engage itself in this issue. With the intention of closing the circle of SEE participants, first steps were initiated to include representatives of Kosovo's law enforcement community. At this stage, UN Mission in Kosovo (UNMIK) and/or OSCE mission staff members are expected to represent the territory's interest in tackling organised crime.

Over and above attracting new players, the chair in conjunction with the Secretariat and the Stability Pact office in Brussels has to focus on maintaining the active involvement of the current and former SPOC members. The partly complicated structures of the Stability Pact require constant communication between National Coordinators (representatives appointed by their governments for all matters concerning the Stability Pact), SEE diplomatic staff members in their representations in Brussels, officers of the local ministries of the interior, justice and foreign affairs. On top of all these potential partners, one needs to add officers from the local police apparatus and the judiciary. However, all these representatives may not guarantee the determination of appropriate action, its implementation and follow-up. The regular change of staff members, complicated hierarchies and the eventual lack of political will hamper consequent participation by dedicated personalities. What can be observed at the SEE states can not be excluded for the international community. Taking into account different levels of devotion within bigger authorities, it is sometimes hard to identify personalities who provide all conditions to take part in the joint combat against organised crime. Hence, it is expected that some time will pass until engaged individuals who represent competent agencies make the right composition of SPOC to tackle this issue of utmost importance.

Stability Pact Initiative to fight Organised Crime Working Groups

Ideally, the SPOC Board members will form working groups along selected technical and legal issues related to the fight against organised crime. The chair, in cooperation with the SPOC Secretariat and the SCSP's Working Table III, will facilitate a dialogue between SPOC board members who wish to commit themselves through a working group.

They will formulate common interests, give advice for launching joint projects and monitor implementation. As indicated above, partners will be drawn from -but are not limited to- EU member states, Non-EU Stability Pact partner states, The European Commission, Europol, Interpol, The Council of Europe, The UNODC, OECD, The South East European Cooperation Process (SEECP), The Central European Initiative (CEI), The South-East European Cooperative Initiative (SECI) and the Research Centre on Transnational Crime in Trento, Italy.

Below, I elaborate on how working groups should be formed in line with their state of legislative harmonization and technical development to deserve further European integration. Plus, three basic fields of concern will pre-determine where and how working group members should become engaged.

Stability Pact Initiative to fight Organised Crime Secretariat

The SPOC Secretariat has been operational from the beginning of 2003. It is located in the premises of the South Eastern European Cooperative Initiative's Regional Center for Combating the Transborder Crime in Bucharest (SECI Center). It consists of, but it is not limited to, a Head of the Secretariat, a Judicial Expert and an Assistant. The SPOC Secretariat acts as a support body for the practical implementation of the objectives of the SPOC Initiative. It will support and advise the SPOC Board and the Special Co-coordinator of the Stability Pact. In 2003, the Secretariat initiated a number of activities with SPOC board members.

It enhanced relations with aforementioned international, European, regional and national actors; the SPOC Secretariat's legal advisor started to analyze laws, decrees, international conventions and programmes, etc. The Secretariat also distributed the findings of the first regional needs assessment project of Transcrime University of Trento. It will elaborate on the proposed studies from Trento. The Secretariat launched an initiative to address the processing and protection of personal data. It is also engaged itself in collaboration with the Trafficking in Human Beings Task Force on the improvement of witness protection.

The Secretariat is also liaising with the SECI Center. The Center has been operational since January 2001 and now functions as a regional focal point for the communication and transmission of information in "real time" on cross-border crime. As of March 2002, 15 liaison officers (police and customs officers) from 9 SECI countries had been deployed to the SECI Center. Specialized Task Forces composed of police and customs officers from SECI Participating States have been organised and are operating in the region. The Task Forces include inter alia law enforcement experts from international organizations and SECI Supporting States. The Task Forces are aimed at combating a variety of transborder crimes including illicit drug trafficking, trafficking in human beings, customs valuation fraud, commercial fraud, financial and cyber crime, trafficking in small arms, trafficking in stolen vehicles and trafficking in radioactive and other dangerous substances. Hence, it is essential that the SPOC Secretariat maintains daily contact with the Center to create synergies between SPOC and SECI Center activities.

The Stability Pact for South Eastern Europe, Working Table III

The office the SCSP provides expertise on legal and technical issues within its Working Table III's Sub Table on Justice and Home Affairs. The experts located in Brussels monitor the progress achieved by SPOC and ensure political support for the work of the Board through regular reports to the SCSP.

In addition, SPOC seeks to create synergies with other Stability Pact initiatives because some concrete features of organised crime were addressed through other on-going initiatives. The coordination with these activities is usually easy since Stability Pact staff members tend to exchange their information on a daily basis.

The Stability Pact Anti-Corruption Initiative's (SPAI) steering group addresses another phenomenon which undermines rule of law and the business climate. Although less active in tackling trans-border trends, SPAI contributes to the creation of local instruments that would generally allow it to address organised crime matters as well. Urgent measures were presented by ABA/CEELI and OECD to guarantee a depoliticized and professional public administration, to strengthen the rules related to conflicts of interest, to intensify the role and capacities of police and prosecutors, to screen the legal system in order to eliminate provisions which might favour corruption (particularly in public procurement) and to develop internal and external auditing. SPAI did decide to place a secretariat in Sarajevo. The experience of the SPOC Secretariat's set-up will be taken into account for this office in Bosnia and Herzegovina's capital.

The Stability Pact's engagement with the Trafficking in Human Beings Task Force is mainly to facilitate regional and international cooperation through the respective secretariats seated in Vienna. Cooperation with the Task Force is essential since it is combating one of the most notorious features of organised crime. Moreover, the Task Force provides already valuable experience when it comes to special attention granted to victims and witnesses. Currently, it is drafting a regional agreement on temporary residence for trafficked victims. The illicit spread of Small & Light Weapons (SALW) is also linked with endeavours to fight organised crime. The Belgrade-based South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC) – a joint project of the UNDP and the Stability Pact – is fully operational and assists in developing programs for reducing illicit SALW proliferation. Active throughout the region, SEESAC has contributed to the destruction of a significant number of weapons.

Last, but not least, organised crime issues matter as far as the Stability Pact's Investment Compact and Business Advisory Council (BAC) work are concerned. The participants of the Compact and BAC voiced concern on the distrust of international potential investors for the region. Hence SPOC complements and shares valuable experience with these activities as well.

Under the Stability Pact's Police Forum initiative, the Association of the European Police Colleges (AEPC) develops training modules in line with London Conference commitments. The new created Association of the Police Chiefs in SEE (SEPCA) might join these activities. From SPOC's view, police training programmes could be of high significance for capacity-building activities for SEE law enforcement officers. Hence, SPOC welcomed the proposal by Austria, Switzerland and Norway of a programme called Organised Crime Training Network (OCTN). OCTN will take place under the Forum's umbrella. Beneficiaries of the training components will be middle management police officers in charge of organised crime matters.

The Stability Pact regards effective control of borders as an essential precondition for security and stability in the region. Border control of the "Schengen type" is a necessary precondition to economic development, especially in connection with efficient customs service, and the utilization of the Free Trade Area policy. Effective border management plays an equally vital role in combating illegal migration, trafficking of human beings, drugs, arms and other forms of regional organised crime activities. To balance this complex issue, key international players and SEE governments started to become involved. The Pact has offered to serve as an "umbrella" to the process and provide auspices for continued joint work with three main partners – EU, NATO and OSCE. The

pragmatic and flexible nature of Working Table III provided for an excellent framework in that regard. Effective border management in accordance with established EU standards is the ultimate aim of all SAP countries. Hence, the goal of the process has been defined from the beginning as "establishing open but controlled and secure borders in the entire region, in accordance with European standards". The achievement of effective border management must ensure tailor-made solutions. The situation in the sub-region called for NATO involvement. In these areas cross-border co-operation of police and military has to be strengthened and fine-tuned in order to successfully combat all cross-border illegal activities. The OSCE's role was also identified as important due to its practical experience in training of border police, institution building as well as promotion of regional and cross-border bilateral cooperation. NATO suggested holding an international conference in Ohrid on border security and management in SEE about a year ago. This conference took place in May 2003 and provided SPOC with new input and potential additional actors. Synergetic coordination with SPOC was deemed necessary regarding all activities in that field.

Stability Pact Initiative to fight Organised Crime at work

SPOC actors discuss informally how best to tackle organised crime. All partners agree that a multileveled strategy should address, among other targets, the educational component and awareness campaigns for civil society, the adoption of properly adjusted legislative tools, the strengthening of institutional capacities, the training of specialists, and the development of a direct and fruitful co-operation, both at the international and regional levels. Regular monitoring should be conducted in order to assess the impact of the anti-organised crime policy and to identify further needs and priorities.

SPOC needs to ensure complementarity with the Stabilisation and Association Process (SAP). This follows the line of the Informal Consultative Committee and the Stability Pact where mutual complementary roles of the Pact and the SAP were envisaged. With its broad scope, the Stability Pact aims at overcoming the legacies of the conflicts of the 1990s and is horizontally including all countries of the region. It is a primarily political initiative to streamline existing efforts to assist SEE on its way to political, economic and security integration as well as to encourage and strengthen co-operation between the countries involved. In relation to the SAP, the added value of the Stability Pact is particularly evident in enhancing regional cooperation. thereby strengthening the regional component of the SAP. It is fostering regional ownership and eventually leadership, most visibly through full participation of the countries of the region in all Pact activities. The Pact is acting as a political coordination forum for the main international players, thereby delivering important additional donor support and enhancing burden sharing in the jointly-elaborated stabilisation efforts. While SAP and Stability Pact are thus in general complementary by design, there are a number of specific ways in which the Stability Pact complements the SAP. With its more encompassing approach, it can embed SAP activities into a wider context by enhancing regional dialogue on a specific subject such as the combat against organised crime. Designed as a flexible instrument, SPOC can function as a "laboratory" for certain activities, and after generating sufficient political momentum in the region and among donors, help prepare the ground for regular European Commission support or other solutions. In sum, SPOC deems close coordination with the European Commission as essential when formulating future projects.

As mentioned above, the initial priorities of the SPOC Initiative are data exchange and witness protection. The reason to concentrate on these issues is the necessity to enhance communication between EU member states and EU institutions such as Europol and the SEE region, be it bilaterally or with regional law enforcement community actors. Data exchange can take place only under the condition that the region provides a system of data protection in accordance with European standards and best practices. Therefore, the processing/protection of personal data and witness protection were chosen to be kick-off projects in order to harmonize laws and technical cooperation.

Stability Pact Initiative to fight Organised Crime in the near future

Mapping the approach

When planning action against organised crime, first of all a determination on the definition of organised crime is needed. SPOC uses the generally accepted definition which requires an on-going criminal enterprise by multiple actors who act in conspiracy. Additionally, the goal of the criminal enterprise must be economic, not political gain. However, in order to be considered an organised crime operation, the enterprise must participate in or be willing to participate in criminal acts, and use violence to protect and promote its interests. Some economists argue that organised criminal enterprises must be "clubs" in the economic sense that they can exclude some people and provide benefits only to members. Others argue that there must be a hierarchical structure.

Anyway, the generally agreed definition would fit for a lot of activities in SEE. For instance, professors belonging to a scientific council of a faculty may well determine prices for selling exams, diplomas or even PhDs to students. Although these may be regarded as serious crimes since society is endangered of being equipped with incompetent future decision-makers, the lack of violence is obvious. This may change if teachers abuse examinations for the sexual exploitation of female undergraduate. In cases where female students are asked for "individual extra" attempts in the professor cabinets, one might classify such common acts in SEE as serious crimes. However, it is hard to prove that these practices constitute a conspiring approach by a group of teachers. Another example may be seen in the dubious relation between local party leaders, political decision-makers such as mayors and management board members of power supply facilities. Often, only a few individuals are able to determine in a non-transparent manner the price for electric or water supply in local communities. Thus, they contribute to the impoverishment of average citizens in SEE. However, focus on those illicit activities would overlook the Stability Pact's regional scope, meaning to address regional issues and thus complementing to the entire integration of SEE. However, the above-described activities might be of concern for SPOC if illicit money is laundered in other parts of the region. In any case, although fully aware of the high criminal potential of the described phenomena, SPOC will concentrate on crimes which are of transborder character, i.e. drug, weapons and women smuggling routes etc.

The SEE region is not homogenous. Though cultural and historical values may be common assets, the countries in the region are on different stages of development and each has particular problems and specific issues to address, especially in the fight against organised crime. This heterogeneity needs to be seriously taken into consideration when developing anti-organised crime policies.

Concretely, this means to differentiate between the stages of development in legal and institutional reforms between the SEE states. According to the SPOC Secretariat's research, three groups can be drawn. The first would consist of Greece, Slovenia and Hungary. The second embraces Romania, Bulgaria and Croatia. The third group would be composed of Serbia and Montenegro, Bosnia-Herzegovina, Albania, the former Yugoslav Republic of Macedonia (FYROM)¹²⁷ and Moldova. The differentiation between these groups is essential when designing concrete projects. Especially, EU financed projects require exact predefining of the status of beneficiaries. But also in terms of internal SPOC overview and programme management, it is of importance to keep the different levels of development in mind.

Horizontally, anti-organised crime measures need to be differentiated by their nature and character. When analyzing various international documents, treaties or conventions, tackling organised crime comes down to three major required activities. First is the creation of a legislative system which allows the fight against organised crime. Secondly, the fight against organised crime can only be successful if technical conditions are met to allow enforcement. And thirdly, public opinion needs to support the authorities' fight against organised criminals. In order to ensure the success of the working groups, joint efforts in the fight against organised crime should be grounded in capacity-building and enhanced international and regional cooperation. Within this frame, focus will be on:

¹²⁷ Turkey recognizes Macedonia under its constitutional name.

- Legal harmonization
- Effective enforcement
- Partnership with the civil society

Legal Harmonization

The successful prosecution of one person in one country is unlikely to impact continuing criminal activities of a criminal group operating within the region. No country in SEE provides sufficient legislative tools or the institutional capacity to successfully investigate and prosecute multi-jurisdictional crimes. Without the requisite criminal legislation allowing multi-jurisdictional investigations and prosecutions, the creation of a secure environment, the promotion of rule of law, of economic and social well-being in SEE cannot be assured.

Legislation needs to address not only the criminalization of various forms of organised activities, but also to provide the necessary procedural tools for their efficient investigation, prosecution and trial in accordance with European standards.

The legislative tools necessary to investigate, prosecute and bring to trial multi-jurisdictional organised crime cases include, but are not limited to, legislation on:

- Protection and processing of personal data;
- Witness protection, including aspects of protection of victims, not only for the duration of the criminal process, but beyond that point as well;
- The use of special investigative techniques: interception and monitoring of telecommunications (including those conducted by computer networks, audio and video surveillance of private and public premises), covert search of private premises, controlled delivery, use of tracking or positioning devices, use of undercover investigators, disclosure of financial data;
- Criminal liability of legal persons, because various entities, such as associations or foundations, can cover illicit operations;

- Effective disclosure of financial data and control of money laundering operations and recognition of electronic evidence as viable evidence in the court;
- Confiscation or seizure of proceeds from crime;
- Common standards on the collection, preservation and use of evidence as to allow evidence collected in one country to be used in the criminal proceedings in another country;
- The execution of penal sentences, extradition of suspects of organised crime activities, mutual legal assistance and multi-jurisdictional task forces.

Ensuring effective enforcement

Most SEE countries lack specialized bodies for the investigation and prosecution of organised crime activities. There is an absence of effective inter-agency and inter-institutional cooperation. In addition to insufficient logistical support and deficiencies in training.

The solution lies in strengthening institutional capacity to fight organised crime. Multi-disciplinary national coordinating mechanisms need to be established throughout the region, which should be primarily responsible for ensuring the enforcement of the anti-organised crime policy, especially of the prevention component.

In-country co-operation between agencies involved in measures for fighting against organised crime must be improved. Joint teams or task forces – consisting of representatives of various agencies: police, customs, border police, prosecutors' offices, judicial experts, etc. – should be set up for the investigation of the most serious forms of organised crime.

Any attempt to structurally dismantle organised crime groups and operations is bound to fail if insufficient human and logistical resources are provided. This constitutes one of the most serious problems for the region, as both experienced specialists and proper technical and financial resources are insufficient. SPOC will mediate assistance requests from SEE countries, based on concrete assistance projects and national reform priorities. Training seminars and study visits can be developed in the same manner.

Promoting the Partnership with civil society

Civil society is now a key player in any anti-crime policy, especially in its preventive component. Ultimately, state institutions work not only for the society, but also with the society. NGOs, mass media, the business community and the society as a whole must be involved in all stages of the process of fighting organised crime. Partnership with civil society should be developed by promoting education campaigns, including vulnerable targets, such as children and women. Also, informing the civil society of the results of important investigations and actions in order to promote transparency with respect to the work of the public institutions is a must.

Public relations work will address the SEE audience in terms of the region's role in providing transit for organised criminal action. Campaigns shall stress that Europe is fully aware that organised crime groups created multi-ethnic empires eroding SEE states. It should be clearly stated that SPOC is conscious of the fact that groups managed to place followers in highest ranking decisions. Signals should be sent that further integration is not possible if the issue of organised crime is locally dealt with as a minor obstacle. The devastating effect of organised crime towards investment should be underlined as well. In sum, SPOC will be firm in its message that further accession will not be rubberstamped.

Secondly, SPOC should also address the wrongly-held belief in SEE that negative effects take place only at the destination (the current EU member states). Insecurity, raising rates of drug addicts or stolen vehicles within SEE prove that a former transit phenomenon spills over on the concerned route countries.

Expected Obstacles

I indicated above that various obstacles can be expected when setting up an effective initiative against organised crime. As far as it is possible to judge, three major difficulties need to be overcome:

- Communication and efficient engagement within SEE countries
- Cooperation between SEE countries
- Commitment by the international community

When describing the composition of the SPOC board, the difficulties to engage the right representatives were pointed out. This will stay on the agenda of the SPOC chair, the Secretariat and the experts of Working The lack of efficient sharing of information between Table III authorities within one country hampers communication between the SPOC working structures and the region. It delays the involvement of competent individuals and administrative or judicial bodies in SEE. Hence, it delays action against organised crime. The inclusion of committed representatives will serve as the litmus test of the political will from the region. While shortcomings in the administration's management can be excused for a considerable period of time, the constant negligence to participate in the fight against organised crime cannot. The latter would even lead to the assumption that local authorities have good reasons to give the combat against transborder crime a low priority.

Secondly, SEE states need to communicate with each other. Organised crime groups work by exploiting the lack of multilateral cooperation. For example, traffickers from Romania may recruit their victims in Moldova. Smuggled through Bulgaria and Serbia, they may get trafficked by Bosnian Serbs and Slavic Muslims to a Croat-dominated area in Bosnia-Herzegovina. The profits of these activities may be laundered by Albanians in FYROM or Montenegro. This simple example shows the involvement of various countries. However, the state authorities involved do little to investigate these activities. While it is politically understandable that each SEE state wishes to communicate directly with EU institutions or authorities in EU member states, the lack of regional cooperation harms common aims such as the fight against

organised crime. Therefore, they are better advised to overcome former rivalries on their way to European integration by taking joint views and determining joint action.

The third obstacle can be expected within the various actors of the international community. The advantage of organised criminal groups lavs in its efficient profit oriented approach. Illicit activities do not necessarily match the mandates of international or European agencies. While other post conflict phenomena could have been addressed through a range of international actors and specific instruments (i.e. fostering return of refugees or displace persons through UNHCR. OSCE, OHR etc.), the fight against organised crime lacks efficient instruments and specialised international actors. Although the work of Interpol, Europol. SECI Center and others is crucial, investigation, enforcement and prosecution remains within the domestic responsibility of local authorities. Thus, assistance from the international community is limited from the beginning. Additionally, potential assistance from international and European actors needs to be well defined in terms of mandates, structures and funding options. While some local needs might fall through a funding gap because no agency feels responsible to reply to the requirements, other requests may not meet satisfaction due to general donor fatigue for the SEE region. Another obstacle in this regard constitutes the lack of local management in SEE which is sometimes barely understood from without. Hence, patience and capacity-building expertise is required of international actors when formulating and implementing projects with partners in the region. SPOC is devoted to bridge the aforementioned obstacles through its constant facilitation of dialogue between the numerous players in the fight against organised crime.

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