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## ANNUAL REPORT

### **on the implementation of the EU Joint Action of 17 December 1998 on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons (1999/34/CFSP) and the EU programme on illicit trafficking in conventional arms of June 1997**

(2001/C 216/01)

#### INTRODUCTION

On 26 June 1997, the EU programme for preventing and combating illicit trafficking in conventional arms was adopted by the General Affairs Council of the European Union, and on 17 December 1998, the Council adopted a Joint Action on the European Union's contribution to combating the destabilising accumulation and uncontrolled spread of small arms and light weapons. Since then, the Member States have gained considerable experience in addressing the scourge of small arms and light weapons through specific actions in various affected regions of the world.

In pursuing the objectives of the Joint Action, the EU has enhanced its efforts to build consensus in regional and international fora (e.g. the United Nations and the Organisation for Security and Cooperation in Europe) and among affected States. The EU has participated actively in the preparations for the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (New York, 9 to 20 July 2001), as well as in the negotiations of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition supplementing the United Nations Convention against Transnational Organised Crime, adopted by the UN General Assembly on 31 May 2001. The EU has also had many bilateral contacts in the framework of political dialogue.

This report is structured in three parts. Part I covers the national efforts to address the problems related to small arms in the Member States, such as inter-agency cooperation, newly enacted legislation and support for relevant research. Part II deals with international measures, such as assistance to projects conducted by international or regional organisations, or non-governmental organisations, assistance to affected States and organising international conferences. EU cooperation with other States is also included in Part II. Finally, in Part III, the priorities for a more systematic approach to EU assistance in the field of small arms and light weapons (SALW) are discussed.

The scope of this report is, in principle, limited to the year 2000. However, since it is the first report under the Joint Action, it also contains some information on prior activities. As a background, the Joint Action and the programme are summarised below.

The associated countries of central and eastern Europe and Cyprus and the EFTA countries members of the EEA have aligned themselves with this programme and the Joint Action.

*The Joint Action (1999/34/CFSP) on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons*

The EU adopted a Joint Action (JA) on small arms on 17 December 1998. The JA proposes a series of objectives, principles and measures that apply to all countries. It also calls upon the EU to contribute to specific actions in support of the JA's objectives. The objectives include combating the destabilising accumulation and uncontrolled spread of small arms, contributing towards the reduction of existing accumulations to levels consistent with legitimate security needs, and helping to solve the problems caused by such accumulations.

In order to realise these objectives, the EU has pledged to work towards building consensus in the relevant international fora, for the realisation of a series of principles and measures aimed at preventing the further destabilising accumulation of small arms. These include:

- a commitment by all countries to import and hold arms only for their legitimate security needs, and by exporting countries to supply small arms only to governments, in accordance with appropriate international and regional restrictive arms export criteria, as provided in particular in the EU Code of Conduct on arms exports,

- the establishment and maintenance of national inventories of weapons owned by State authorities, and the establishment of restrictive national arms legislation for small arms,
- the establishment of confidence-building measures, including measures to promote increased transparency and openness. This could be achieved through regional registers on small arms, and regular exchanges of available information on exports, imports, production and holdings of small arms, and on national arms legislation,
- combating illicit trafficking of small arms through the implementation of effective national controls of arms transfers,
- challenging and reversing 'cultures of violence' by enhancing public involvement through public education and awareness programmes.

Furthermore, the EU will aim at building consensus at regional and international levels for a series of measures aimed at reducing existing accumulations of small arms. Such measures could include:

- assistance to countries seeking to control or eliminate surplus small arms on their territory,
- promotion of confidence-building measures and incentives to encourage the voluntary surrender of surplus or illegally-held weapons, the disarmament and demobilisation of combatants and their subsequent rehabilitation and reintegration into civil society,
- the effective removal of surplus small arms to safe storage, as well as their quick and effective destruction, preferably under international supervision,
- the rendering of assistance through appropriate international organisations, programmes and agencies as well as regional arrangements.

In this respect, the EU has undertaken to provide financial and technical assistance to projects which make a direct contribution to the realisation of the abovementioned principles. These include programmes and projects conducted by the UN, the International Committee of the Red Cross, other international organisations and regional arrangements, as well as NGOs. The projects might include, *inter alia*, weapons collection, security sector reform, and demobilisation and reintegration programmes, as well as specific victim assistance programmes.

*The EU programme for preventing and combating illicit trafficking in conventional arms*

The EU programme for preventing and combating illicit trafficking in conventional arms was adopted by the General Affairs Council on 26 June 1997.

The programme seeks to address the problems of illicit trafficking in conventional arms, particularly small arms, both within the EU and in countries affected by illicit trafficking in small arms. The programme consists of three main parts. The first part suggests the fostering of enhanced law enforcement cooperation and improving information exchange on illicit trafficking. The second part encourages the EU and its Member States to assist other countries in preventing and combating illicit trafficking of arms, e.g. by strengthening laws and administrative measures for regulating and monitoring the transfers of arms, and providing an adequate number of appropriately trained police and customs officials for the enforcement of national arms export control legislation. The third part of the programme outlines ways for the EU and its Member States to assist affected countries, especially in post conflict situations, in suppressing the illicit circulation and trafficking of arms, e.g. by setting up weapons collections, buy-back and destruction programmes, and setting up educational programmes to promote awareness among the local population of the negative consequences of illicit trafficking in small arms.

A first annual report on the programme was published on 8 July 1998, and a second on 19 January 2000. The reporting procedure under the programme is now coordinated with that of the Joint Action. Thus, the present report covers the programme as well as the Joint Action.

#### PART I

##### NATIONAL EFFORTS TO ADDRESS SMALL ARMS RELATED PROBLEMS

##### I.A. **Cooperation, coordination and exchange of information between administrative and law enforcement agencies, etc**

As regards cooperation, coordination and exchange of information between administrative and law enforcement agencies, and other similar measures, the Member States have provided the following information.

In *Ireland* the police service cooperates with the Irish customs and excise authorities and the Irish armed forces in their efforts to enforce firearms legislation. Forensic testing and tracing of all seized firearms is carried out centrally by Garda Headquarters.

In *Sweden* police authorities cooperate with the customs authority, the National Inspectorate of Strategic Products, and the Swedish armed forces in addressing the problems of illicit arms trafficking and the presence of illegal arms. In the normal process of investigating arms violations, authorities assist each other as a matter of routine. The National Laboratory of Forensics maintains a weapons reference library, and also a library with firing test data relating to seized weapons. Sweden is, together with *Denmark* and *Norway*, developing a Nordic weapons trace database.

In *Italy* an ad hoc group on small arms and light weapons, coordinated by the Ministry of Foreign Affairs, was established in June 2000. This group includes representatives of all relevant ministries and law enforcement agencies, as well as a representative of the National Industrial Association of Arms Producers. A useful dialogue on SALW has also been initiated by the Ministry of Foreign Affairs with some Italian NGOs. The Ministry is, furthermore, supporting a study on the Italian production and export of SALW, to be completed by the beginning of the UN Conference on small arms.

In *Spain* law enforcement agencies organise yearly courses on weapons and explosives and their criminal use, as well as seminars to share and update information on this issue, and information on technology applied to weapons and explosives. A new computer based system, shared by the different law enforcement agencies and designed to identify weapons suspected of being linked to crimes, became operative in early 2000.

In the *United Kingdom* an inter-departmental small arms policy committee was established in 1997 under the chairmanship of the Foreign and Commonwealth Office. The Committee meets quarterly to monitor and coordinate policy developments on SALW issues. There is also ongoing and regular dialogue with interested NGOs on the subject.

#### I.B. **Newly enacted legislation, reviews of the practical function of existing legislation**

As regards newly enacted legislation and reviews of the practical function of existing legislation, the Member States have provided the following information.

In *France* an effort to reform the law applicable to brokers and other intermediaries engaged in commercial arms and war-related materiel transactions is underway. A bill has just been approved by the Prime Minister and will be adopted in the coming months. The new legislation requires brokers to

submit their activities to prior authorisation and obliges them to keep a special register containing details of their transactions. Brokers will also be subjected to periodic control by the authorities. This regime applies not only to brokers, but also to intermediaries, and goes beyond small arms and light weapons, as it concerns all arms and war-related material subject to national regulation.

In *Ireland* exports of SALW are controlled under the Control of Exports Act (1983). The Control of Exports Order provides a schedule of goods that may not be exported without a licence issued at the discretion of the Minister for Enterprise, Trade and Employment. A Revised Control of Exports Order was issued in 2000 to further streamline Irish licensing requirements for exports of all items on the military list. The possession, use and carriage of firearms are regulated in Ireland by legislation contained in various firearms Acts. Regulations with respect to the safe storage of licensed firearms are currently being reviewed.

In *Belgium* the Minister of Justice, in 2000, elaborated a security plan that deals, *inter alia*, with small arms. A new law that will substantially modify existing legislation is scheduled to be submitted to Parliament.

In *Sweden*, possession, trade and importation of firearms are regulated by the Firearms Act and the Military Equipment Act. Certain amendments in order to further prevent firearms from being used in criminal activities, and other abuse of such weapons, were made to the firearms legislation in 2000. The new legislation stipulates, *inter alia*, that local police authorities are required to inspect that the provisions concerning the safe storage of firearms are adhered to. Arms dealers are not allowed to have automatic firearms in stock. An automatic firearm can only be ordered when the dealer has a licensed buyer for it. Authorisation to possess handguns and automatic firearms is limited in time to up to five years. Private citizens may hand in unlicensed firearms to police authorities, whereupon possible charges for illegal possession may be dropped.

In December 2000 the *United Kingdom* announced that it would soon publish draft legislation (the Export Control and Non-Proliferation Bill) that would, *inter alia*, introduce powers to license brokering transactions. The Bill was subsequently published in March 2001. In July 2000, the United Kingdom published its third Annual Report on Strategic Export Controls, covering the 1999 calendar year. This saw a new level of transparency in a Report that will become ever more specific and detailed in the future.

In *Italy* the issue of SALW has been discussed in the Parliament, where the Committee for Foreign Affairs of the Chamber of Deputies in October approved a resolution obliging the Government '... to take a strong stand, in all competent international fora, in support of the fight against the uncontrolled spread of small arms and light weapons ...' and '... to strengthen, also at national level, the measures intended to intensify or better coordinate the efforts to fight against the trade of SALW ...'.

In April 2000 Italy published its tenth Annual Report on import, export and transit of defence equipment (both authorisations and deliveries) in accordance with Act No 185/1990. The Report, which is addressed to the Parliament but is also made available to the public, provides a large amount of information by the six ministries involved in the system of scrutiny of defence equipment exchanges.

In *Germany*, a motion to change the Weapons Act, which mainly relates to the possession and use of weapons inside Germany, has been drafted. The draft is still under discussion. In January 2000 the Federal Government adopted amendments to the 'Political Principles for the Export of War Weapons and other Military Equipment'. These Political Principles are applicable to the export of all small arms and light weapons. The main amendment consists of a stronger emphasis on the human rights situation in the recipient country, which has to be taken into account when making any export decision. In addition, the importance of securing the end-use of the exported weapons was highlighted. Finally, it was stressed that the EU Code of Conduct forms an integral part of the Political Principles.

In the *Netherlands* the maximum penalty for illegal possession of, and trade in small arms was increased in 2000. The Parliamentary Assembly further agreed to draft legislation on the transit of military items. This law is likely to enter into force during 2001.

In *Luxembourg* existing legislation relating to small arms is currently under review.

#### I.C. **Other initiatives or activities, e.g. support for relevant research**

The Member States have also reported on other initiatives and activities to combat the accumulation and uncontrolled spread, and to prevent illicit trafficking, of small arms, such as support for research projects.

In *France* the publication of the following two documents represents an effort to achieve greater transparency, aiming to reach a large public.

(a) The Defence Minister's Report to Parliament on French exports of military related materials in 1999. This report

sets out to Parliament, and, more generally, to the public, the position of France, and her actions on the international level regarding the fight against the proliferation and uncontrolled circulation of small arms and light weapons. The report makes a substantive attempt to increase transparency by indicating, by country of origin, the number of prior exports authorisations, by categories defined by the Joint Action of the European Union. Notably, it provides information concerning remunerated and non-remunerated transfers that were effected in 1999 by the Ministry of Defence, particularly with regard to small arms and light weapons. It should also be noted that the separation between the function of export promotion and that of control has been reinforced.

The report is available on the internet, at <http://www.defense.gouv.fr>, under the heading 'actualité', and 'tous les dossiers en ligne'.

(b) The brochure 'Arms control, disarmament and non-proliferation: French Policy' published in 2000, available in French and in English, deals with the issue of SALW. Extensively distributed, it contributes to making French action in this area available to a wide audience.

*Sweden* has supported the following projects at the Stockholm International Peace Research Institute (SIPRI):

- 'Military expenditure data for African countries', SEK 1 million,
- 'Conflicts and small arms transfers', SEK 480 000. This project is in cooperation with the Swiss-based 'Small Arms Survey',
- 'Internet database on European conventional arms export Controls', SEK 1,5 million. The purpose of the project is information and verification of the EU Code of Conduct on arms exports, with a focus on east and central Europe,
- 'Conflict prevention, management and resolution in Africa', SEK 500 000. This is a part of the SIPRI 'Conflict prevention and armed responses' research programme.

In the *Netherlands* an exhibition on SALW was organised at the Ministry of Foreign Affairs in The Hague in January 2000. From 1 to 12 November 2000, the Ministry of Justice organised a campaign to collect illegal firearms amongst civilians through exemption from the usual penalty. The collected firearms will be destroyed. Some have already been destroyed symbolically — they were crushed with a road roller.

In *Denmark* the defence authorities have destroyed 30 300 machine guns and 14 400 rifles between 1989 and 2000 as a follow-up to the UN General Assembly resolution 'Illicit traffic in small arms'.

In December 2000 the *United Kingdom* mounted a 'Focus International' paper on SALW on the Foreign and Commonwealth Office website, setting out United Kingdom involvement in the SALW debate.

## PART II

### EFFORTS AT THE INTERNATIONAL LEVEL TO ADDRESS SMALL ARMS RELATED PROBLEMS

In the international field, actions are taken by both the EU and the individual Member States. The following information has been provided.

#### II.A. EU action

The EU is active both as regards assistance to and cooperation with States and international and regional organisations.

##### II.A.1. *Projects supported by the EU*

The European Union has taken the following actions as regards technical, financial and other assistance given to projects conducted by the UN, the ICRC, other international organisations and regional arrangements, and NGOs, as well as to other States, especially those in affected regions:

On 10 May 1999 the Council adopted an implementing Decision (1999/320/CFSP) <sup>(1)</sup> of the Joint Action on a European Union contribution to the collection and destruction of weapons in Albania. This decision aimed at contributing to promoting the collection and destruction of weapons in the Gramsh district in Albania. The EU contribution of EUR 500 000 was allocated to the disarmament component of the UN DDA and UNDP pilot project. Furthermore, the Council amended the Decision on 17 December 1999 (1999/846/CFSP) <sup>(2)</sup> in order to extend the project to Elbasan and Peskopja districts of Albania. On 5 April 2000 the UNDP informed the EU Commission that it was unable to fulfil the terms of a draft contract proposed by the Commission in accordance with the implementing Decision. For this reason the Council decided to repeal the two Decisions on 20 November 2000 <sup>(3)</sup>.

<sup>(1)</sup> OJ L 123, 13.5.1999, p. 12.

<sup>(2)</sup> OJ L 326, 18.12.1999, p. 74.

<sup>(3)</sup> OJ L 292, 20.11.2000, p. 2.

On 17 December 1999 the Council adopted an implementing Decision (1999/845/CFSP) <sup>(4)</sup> of the Joint Action with a view to an EU contribution to combating the destabilising accumulation and uncontrolled spread of SALW in Mozambique. With this Decision the EU contributed to the location, collection and destruction of weapons in Mozambique through the joint cross-border operations between the South African Police and the Mozambique Police (Operation Rachel). The EU provided EUR 200 000 for the support of the South African Police Service, which was acting as an implementing agency, in the acquisition of fuel, air support, explosives and accessories as well as ration packs and daily allowances. The project will be successfully completed during the first half of 2001.

On 15 November 1999 the Council adopted the Decision 1999/730/CFSP implementing the Joint Action with a view to an EU contribution to combating the destabilising accumulation and uncontrolled spread of small arms and light weapons in Cambodia <sup>(5)</sup>. With this decision, the EU contributed EUR 500 000 to promoting control, collection and destruction of weapons in Cambodia. A Project Manager, H.J. van der Graaf, was appointed to carry out the project. He has been based in Phnom Penh. The Decision expired on 15 November 2000 but the Council decided to extend the mandate of the project manager and adopted a new Decision 2000/724/CFSP <sup>(6)</sup> on 20 November 2000. This Decision will provide a further EUR 1 300 000 to the project, which is conducted in close cooperation with the government of Cambodia.

On 14 December 2000 the Council adopted an EU contribution of EUR 90 000 to the local police forces in South Ossetia for a programme aiming at granting them equipment for the collection and destruction of SALW. This contribution is meant to influence public opinion in favour of civil disarmament, to consolidate and develop participation of civil society in the process of arms collection and destruction and to create a climate of security and reconciliation among populations.

On 12 March 2001 the Council adopted an EU contribution to combating the small arms problem in Latin America and the Caribbean, through the projects of the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean, located in Lima (Peru). This contribution seeks to help the Centre in its training activities for customs and police officials, by means of appropriate instruction and in its project of making available equipment that permits the creation of databases on the accumulation of

<sup>(4)</sup> OJ L 326, 18.12.1999, p. 73.

<sup>(5)</sup> OJ L 294, 16.11.1999, p. 5.

<sup>(6)</sup> OJ L 292, 21.11.2000, p. 3.

SALW in this region. The EU contribution amounts to EUR 345 000.

#### II.A.2. *EU cooperation with other States*

At the EU-USA Summit of 17 December 1999 it was decided to establish a Working Group on SALW for regular exchanges at the expert level with a view to increasing cooperation and information sharing and evaluate progress achieved by the EU and the United States of America on small arms issues. The Group meets at least once during each EU Presidency. At its meetings in December 2000 and June 2001 it has been focusing on the UN 2001 Conference. As part of the preparations for that Conference the EU Troika has had a number of informal meetings with the United States of America.

Following the EU-Canada Summit Declaration on the Establishment of a Joint Working Group on Small Arms of 16 December 1999, the Working Group has met every six months, lately focusing, *inter alia*, on the preparations for the UN 2001 Conference. The Working Group met in December 2000 and May 2001. Informal meetings with Canada have also been held. An EU-Canada Workshop entitled 'Small arms and light weapons destruction in the context of peace support operations' was held in Ottawa on 15 and 16 May 2001.

In 1998 the EU and the Southern African Development Community (SADC) adopted the regional Action Programme on light arms and illicit trafficking, providing a framework for action as regards, *inter alia*, illicit trafficking, strengthening of legal controls of arms transfers, removal of arms from society and enhancing transparency. In 1999 an EU-SADC Working Group on small arms was established which met for the first time in June 2000. During its second meeting in April 2001 the Working Group discussed areas of concrete cooperation and the preparations for the UN 2001 Conference.

In the margin of the Multi-Disciplinary Group (MDG) meetings have been held between the EU Member States and a number of the G-8 countries, as well as Mexico, as part of the preparations for the negotiations on the UN Firearms Protocol.

#### II.A.3. *Internal EU cooperation*

Within the framework of the Third Pillar Police Cooperation Working Group (PCWG) operational project against illicit arms trafficking (Project Arrow), Member States' police authorities and customs services are cooperating. The purpose is to achieve the objective of a joint EU strategic summary review and analysis of illicit trafficking in arms. Project Arrow which is coordinated by Finland, was implemented as a joint

operation against illicit arms trafficking, and was realised in the form of a joint European action from 13 to 26 November 2000.

#### II.B. **Member State action**

The EU Member States are providing financial, technical and other forms of assistance to projects run by the UN, by other international or regional organisations and by NGOs. In addition, the Member States are supporting affected States directly.

##### II.B.1. *Member State support to UN projects*

The Member States have provided support to the following projects under the auspices of the UN.

*France* has implemented measures of financial assistance of FRF 3 million for PCASED (the Programme for coordination and assistance for security and development, implemented by the UNDP), and FRF 2,5 million, over five years, for the United Nations Regional Centre in Lomé.

*Sweden* has made the following contributions to UN projects related to SALW:

- SEK 350 000 for the completion of the UN Lessons-Learned Unit 'Monitoring the implementation of the principles and guidelines on disarmament, demobilisation and reintegration of ex-combatants' consultant project,
- USD 5 000 to fund the printing of the 'Disarmament, demobilisation and reintegration of ex-combatants in a peacekeeping environment' report by the UN Lessons-Learned Unit,
- USD 15 000 to the Unidir 'peace building and practical disarmament in West Africa' project, which is linked to PCASED,
- USD 20 000 to the UN Regional Centre for Peace and Disarmament in Africa, based in Lomé, for the establishment of a clearing house for combating illicit trafficking in small arms,
- SEK 4 million to the UNDP 'Arms for development' project in Elbasanj, Albania,
- USD 350 000 to the implementation of the Ecowas moratorium on the import, export and manufacture of small arms, through the UNDP Programme for coordination and assistance for security and development (PCASED). Support will continue during 2001 (the total Swedish contribution to PCASED amounts to USD 1 million, which places Sweden among the top donors to the Programme).

Sweden is also contributing a junior professional officer to the Lima-based UN Regional Centre for Peace, Disarmament and Development in Latin America, and USD 20 000 for training police and customs personnel, and for the establishment of a regional clearing house for firearms.

In addition, the Swedish National Defence College has, in cooperation with the UN Department for Peacekeeping Operations, contributed to international courses in 'Disarmament, demobilisation and reintegration of ex-combatants (DD&R)' in Zimbabwe, Canada, Sweden and Ghana, using a curriculum put together by representatives from the Lester B. Pearson Peacekeeping Centre of Canada, the Norwegian Armed Forces International Centre and the Swedish National Defence College. The first course in Sweden took place in September 2000, and drew around 20 international participants, who represented the military and various governmental and non-governmental organisations. The objective of the course was to give a comprehensive view of peace support missions in order to increase the understanding of activities and programmes needed for peaceful development, as well as to share experiences from the field. A second course was given in June 2001. The Swedish Government has awarded SEK 850 000 in support of this project.

*Belgium* has supported a UNIDIR-project on the role of civil society in control of small arms in Western Africa.

*Germany* has supported the following UN projects with regard to 'Disarmament, demobilisation and reintegration of ex-combatants (DD&R)':

- Unicef project in Sierra Leone for the reintegration of children: DM 890 000,
- UN Mission in the Central African Republic (Minurca) demobilisation and reintegration programme in the Central African Republic: USD 330 000,
- UN Department for Disarmament Affairs (UN DDA) fact-finding mission in Niger for a 'Weapons in exchange for development' project: USD 61 000,
- UN Regional Centre for Peace and Disarmament in Africa (Lomé), programme for peace and disarmament in Africa: USD 49 000.

The *Netherlands* contributed NLG 50 000 to the UN Regional Centre in Lima for a project in Latin America and the Caribbean to train police and customs personnel.

*Denmark* has provided USD 5 000 to UN DDA for the preparation and printing of 'Practical disarmament measures. A reference paper'. This reference tool describes the origins, the

mandate and the evolution of the practical disarmament measures approach to addressing specific situations, puts forward a set of considerations for evaluating project proposals and sets up a sample design for formulating project proposals

*Finland* has contributed EUR 12 500 to Unidir for a small arms trafficking project and EUR 8 350 to the United Nations Disarmament Information Programme for a project on small arms information.

The *United Kingdom* has so far provided GBP 1 365 000 for the UN weapons collection programme in Albania, which includes GBP 610 000 through the United Nations Development Programme for its pioneering project 'Weapons in exchange for development'. The United Kingdom, further, has provided GBP 300 000 to the Programme for coordination and assistance for security and development (PCASED), which seeks to implement the Ecowas Moratorium and to facilitate the adoption of other measures in other regions in Africa.

#### II.B.2. **Member State support to projects under the auspices of other international organisations, and of NGOs**

As regards support to projects under the auspices of international organisations other than the UN, regional arrangements and NGOs, the Member States have provided the following information.

*France* supports the moratorium on the importation, exportation and manufacture of small arms and light weapons in west Africa, adopted by the Heads of State and Government of ECOWAS. Furthermore, France has provided financial support of FRF 330 000 to the National Conference of Mali regarding small arms and light weapons, which took place in November 2000. French action with regard to the fight against illicit trafficking in small arms is essentially centred on bilateral cooperation. A number of efforts have been undertaken to support several African States to reinforce the operational capabilities of police and customs services within the framework of the fight against major trans-border trafficking, in which illicit arms trafficking is included (financial contribution of FRF 13 million).

France has also contributed financially and logistically to the 'Seminar for the implementation and application of the regulation of the control of international movement of fire arms, their parts, components and ammunition', in Martinique on 23 and 24 May 2000, organised by the Inter-American Drug Abuse Control Commission (CICAD) in the context of the Organisation of American States and the UN Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean, which dealt with the question of SALW.



Sweden has made the following contributions to international projects related to SALW:

- SEK 3,3 million to a World Bank project for demobilisation in Cambodia,
- USD 300 000 to the Organisation of African Unity for regional preparations for the UN Conference on the illicit trade in small arms and light weapons in all its aspects,
- SEK 1 million to the Arias Foundation for Peace and Human Progress for the development of an international code of conduct on arms transfers, and for preparations for the UN Conference on Illicit Trade in Small Arms and Light Weapons in All its Aspects.

Sweden has also supported the following research projects:

- the Graduate Institute of International Studies 'Small arms survey' project, which aims to increase the knowledge of manufacture, transfers, stockpiling and use of small arms, and to establish 'best practices' for the regions that the project focuses on, with SEK 180 000 annually. This is a Swiss project supported also by Germany, Denmark (CHF 70 000) Great Britain (GBP 30 000) and the Netherlands (NLG 100 000), as well as by Canada and Norway,
- the Saferworld 'Tackling the spread of light weapons: deepening collaboration between EU Member States and associate countries' programme of seminars, with SEK 200 000, February 1999 to January 2001,
- the Monterey Institute 'Practical guide for working in weapons-abundant areas: identification, safe handling, collection and destruction', with SEK 135 000. This project is also supported by Switzerland,
- the South Africa-based Institute for Security Studies' project on the proliferation of small arms in Southern Africa, with SEK 600 000.

Belgium has supported a study on the production of arms abroad under Belgian licence by the Belgian NGO 'Vrede'. Belgium has also supported the project 'Gun-free South Africa', in coordination with the Belgian NGO 'Broederlijk Delen'. The purpose of the project is to raise the awareness in civil society regarding the negative effects of the excessive spread of small arms.

Germany has supported the 'Swords into ploughshares' project in Mozambique: USD 161 000 project with regard to 'Disarmament, demobilisation and reintegration of ex-combatants (DD&R)'.

The Netherlands contributed NLG 43 000 to the publication of the guide 'Tackling small arms and light weapons: a practical guide for collection and destruction' by the Programme on security and development (SAND), the Monterey Institute of International Studies and the Bonn International Centre for Conversion (BICC). Finland made a contribution of EUR 8 000 to the same project.

The Netherlands further made the following contributions:

- NLG 900 000 to the joint project of the OAU/ISS on small arms,
- GBP 70 000 to the joint project of Saferworld, BASIC and International Alert 'Biting the bullet',
- NLG 100 000 to the project of Saferworld 'Tackling the spread of light weapons: deepening collaboration between EU Member States and associate countries'.

Units of the Italian Army participated in a number of external operations, during which the following SALW were collected or confiscated and subsequently destroyed:

The MSU-KFOR unit: four machine guns, 86 sub-machine guns, 28 rifles, four anti-tank guns, 35 shotguns, 12 grenade launchers, 71 revolvers, five rifle grenades, and 60 hand grenades, were handed over to the Multinational Brigade Destruction Centre.

The Italfor-BIH unit: one light machine gun, five automatic rifles, two rifles and five portable launchers were collected and destroyed.

The Italfor-Kosovo unit: 65 light machine guns, five heavy machine guns, 15 mortars (14 destroyed), 43 anti-tank guns (38 destroyed), four grenade launchers, eight anti-aircraft guns (five destroyed), 870 automatic rifles (865 destroyed), 391 rifles (387 destroyed) and 31 shotguns (28 destroyed).

### II.B.3. **Actions taken by Member States in support of affected states**

The Member States have provided the following information as regards technical, financial and other assistance given to other States, especially those in affected regions:

In August, the United Kingdom facilitated an EU-funded fact-finding visit to London by the Legal Adviser to the Deputy Prime Minister of Cambodia on United Kingdom SALW legislation. In September, the United Kingdom formally handed

over a United Kingdom-made Euroshear 4 000 weapons destruction machine to the Royal Swaziland Police, and provided training in its use.

In November 2000, the United Kingdom approved funding for a small arms destruction fund to begin operation in 2001/2002 with an allocation of GBP 140 000 for that year. United Kingdom forces continued to play a leading role in the weapons and ammunition collection programmes that form part of Operation Leatherman in Kosovo and Operation Harvest in Bosnia.

The *Italian* and Albanian Ministries of Defence have drafted a memorandum of understanding on cooperation, following the Agreement on Bilateral Cooperation for Defence between the Italian Government and the Albanian Government of 1995. The agreement aims at reorganising and strengthening the Albanian Armed Forces. Italy will provide technical assistance, advice, equipment and materials in specific fields. The main goals for cooperation are stabilising and normalising the Balkan area, and providing direct assistance in reorganising the Albanian social-political framework during the sensitive transition phase of the westernising and modernising process. An Italian Experts Delegation (DIE) has been established to develop assistance and cooperation activities to assist the Albanian armed forces in transforming and adapting their military structures. DIE has been operating in Albania since 28 August 1997 together with Albanian experts.

*Germany* has supported disarmament, demobilisation and reintegration programmes (DD&R) in Angola, Chad, Ethiopia, Eritrea, Mozambique, Somalia and Uganda. In the Philippines the reintegration of former Muslim combatants in Mindanao is being promoted within the framework of two projects (education and family health). Discussions are currently underway concerning the provision of support to the Government of South Africa's rationalisation programme (demobilisation and reintegration) via the Institute for Security Studies (ISS). Between 1999 and 2002 funding in the amount of DM 4 million is designated for the DD&R of former combatants in Cambodia. For the integration of former combatants in Mozambique DM 13,4 million has been designated between 1994 and 2001. The DD&R of ex-combatants in Sierra Leone are being prepared in the context of a comprehensive rehabilitation and reconstruction programme amounting to DM 5,34 million.

For the development and extended application of measures to control the trade in small arms in the Horn of Africa, funding

of DM 1,5 million is being provided by Germany between 2000 and 2002. For the contribution of development cooperation to reducing the uncontrolled spread and misuse of small arms, funds amounting to DM 10 million are earmarked for the period 2001 to 2004. In addition, in applying an integrated and comprehensive approach, several development projects which have an impact on combating the small arms problem are being funded, e.g. in connection with security-sector reform, good governance and promoting advocacy through civil-society organisations.

In November 2000 Germany initiated a project aiming at the effective destruction of small arms in Albania within the framework of the 'Stability Pact for southeast Europe': From December 2000 to April 2001 40 000 SALW have been destroyed by an expert team from the Albanian Ministry of Defence in cooperation with German specialists who provide training as well as special material and equipment. DM 500 000 has been designated for this purpose. The project is based on a Memorandum of 7 September 2000, in which the Government of Albania has committed itself 'to destroy the small arms and light weapons looted during the 1997 crisis, including those that have already been collected and will be collected in the future from the civilian population'.

The *Netherlands* has contributed NLG 300 000 to the OSCE Voluntary Fund for Moldova for the withdrawal of Russian military equipment from Transdniestria. The Netherlands also financed the participation of a national expert for destruction of ammunition to the OSCE Mission to Moldova.

The *Netherlands* has contributed to the realisation of the 'Flamme de la Paix' in Niger with NLG 25 000. *Denmark* allocated DKR 145 000 to this project. *Belgium* has also contributed.

In the autumn of 2000 *Finland* funded two consultants in order to prepare small arms surveys, one in Guatemala and the other in Bosnia-Herzegovina. This year Finland is planning to implement some initiatives and recommendations given in these surveys.

The *Spanish* Guardia Civil gives technical assistance to law enforcement agencies in countries like Nicaragua, Guatemala, El Salvador, Mozambique and Timor. This assistance includes the control of small arms and explosives.

## II.C. Organising and participating in international seminars and conferences by Member States

The Member States have provided the following information as regards organising and supporting international seminars and conferences. In addition, the EU Member States have participated in numerous seminars and workshops on export controls and on small arms and light weapons.

In February the *United Kingdom* funded the Kampala Conference on 'Tackling small arms proliferation in eastern

Africa and the Greater Horn', which led to an outline Action Plan for the subregion which will tackle the subject of arms trafficking. DFID has contributed funding for follow-up meetings in connection with this Action Plan. The United Kingdom is supporting five follow-up workshops being organised by Saferworld and the Inter-Governmental Authority for Development.

*Austria* has contributed financially to the organisation of a regional roundtable, on 14 and 15 April 2000 in Tblisi, Georgia, entitled 'Small arms — large measures: curbing arms transfers as a conflict prevention strategy in the south Caucasus'. The roundtable was organised jointly by the East-West Institute and by Saferworld. *Finland* was one of the moderators of the roundtable. *Austria* provided a keynote speaker, and *French* experts attended. *Austria* also provided financial assistance to two delegations for their participation at the OSCE-Seminar on small arms and light weapons, in Vienna from 3 to 5 April 2000 and provided a keynote speaker. The *Netherlands* and *Finland* provided financial assistance to three delegations for their participation. *Finland* provided one of the moderators. As Chair-in-Office of the OSCE, *Austria*, together with International Alert and Saferworld, organised a side event on SALW (Tackling small arms — the OSCE Initiative and the UN 2001 Conference), on 27 November 2000, on the margins of the OSCE Ministerial Meeting in Vienna.

The *Dutch* Minister of Foreign Affairs attended the EU/SADC Ministerial Meeting, held in Gaborone, Botswana, on 29 and 30 November 2000. The Minister introduced the issue of SALW through his speech. The meeting resulted in the adoption of the EU/SADC Declaration on Small Arms. *Denmark* has given USD 30 000, of which USD 10 000 will be used for follow-up, *Finland* EUR 30 000, and the *United Kingdom* GBP 50 000 in support of the Great Lakes Region and Horn of Africa Conference on small arms, held in Nairobi from 12 to 15 March 2000 which was organised by the Security Research and Information Centre (SRIC) and the United Nations African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI).

*Finland* organised the international workshop 'Action plan for small arms — goals for the 2001 UN Conference workshop' in Saariselkä, Finland, in December 2000. The workshop was organised in association with Saferworld, BASIC and International Alert and formed a part of their 'Biting the bullet' project, in preparation for the UN 2001 Conference.

*Belgium* has sponsored a seminar organised by Saferworld on the control of illegal transfers with a special interest for the air transport sector.

*Germany* has hosted an International Policy Dialogue Conference on development and disarmament, on 31 October and 1 November 2000 in Bonn, focusing on the SALW issue.

In February 2000 *Portugal* organised a meeting with Amnesty International on military, security and police equipment transfers, and participated in the 'Controlling the flow of SALW from and through an enlarged EU' seminar organised by Saferworld.

## II.D. EU and Member State participation in the work of international organisations and regional arrangements in the field of conventional arms, especially small arms and light weapons, and efforts to build consensus in relevant regional and international fora on the principles of the Joint Action

### II.D.1. *The United Nations (in particular the preparations for the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects)*

Because of the importance that the EU attaches to the measures to combat the uncontrolled spread and destabilising accumulation of small arms, the EU has taken an active interest in the preparations for the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.

The EU has put forward proposals in key areas, such as export controls and criteria, marking and tracing, brokering, stockpile management, surplus and destruction, disarmament, demobilisation and reintegration of ex-combatants, assistance for implementation of concrete measures and follow-up, in pursuit of a politically binding programme of action with forward looking measures at the national, regional and global level.

In July 2000 the *United Kingdom* nominated Sir Michael Weston as the United Kingdom candidate to chair the Conference and in September he was endorsed as the EU candidate.

In the margin of the first Preparatory Committee of the 2001 Conference, the *Netherlands*, together with Switzerland and Norway, launched the initiative of a Group of Friends to the 2001 Conference, designed to give further impetus to the Preparatory Committee process. On 28 and 29 September 2000 the *Netherlands*, together with Hungary, organised an expert workshop on destruction of SALW. This workshop resulted in a set of recommendations to the 2001 Conference which were presented to the chair of the Preparatory Committee of the Conference. During the same Preparatory Committee session, on 29 February 2000, the *Netherlands* co-organised a public briefing with Saferworld, BASIC and International Alert.

*France*, *Belgium* and the *United Kingdom* were represented on the UN Group of Governmental Experts, established under UNGA resolution 54/54 V. In preparation for the 2001 UN

Conference, this Group carried out a study on the feasibility of restricting the manufacture and trade of SALW to persons who had been authorised by States, including in its mandate brokering activities, in particular transport and financial operations related to illicit supplies. The United Kingdom and other Member States also participated actively in the work of the Geneva Group of countries working on SALW and the Conference.

In view of the 2001 United Nations Conference, *France*, in cooperation with Switzerland, presented, during the first session of the Preparatory Committee for the UN Conference on small arms, a discussion paper 'Contribution to the implementation of an international action plan for the 2001 Conference: The marking, identification and the control of SALW'. A seminar was organised on the issue in Geneva, on 12 and 13 March 2001.

The EU Member States have actively taken part in the negotiations on the Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against transitional organised crime, which was adopted without vote by the General Assembly on 31 May 2001. The EU Commission had a negotiating mandate on certain articles of the Protocol. *France* has organised a working meeting of the Member States of the Francophonie on this theme in January 2000.

Furthermore, *Belgium, Finland, France, Germany, the United Kingdom* and *Sweden* have participated in the work of the United Nations Secretary-General's Group of Governmental Experts on small arms, which has produced two reports on the issue.

#### II.D.2. *The United Nations General Assembly*

Member States have taken the following positions on the resolutions relating to small arms issues, which were adopted by the 55th General Assembly of the United Nations:

- 'Consolidation of peace through practical disarmament measures' (55/33 G)
  - *Germany* (tabled), *EU Member States* co-sponsored
- 'Transparency in armaments' (55/33 U)
  - *Germany* and the *Netherlands* (tabled), *EU Member States* co-sponsored
- 'Illicit traffic in small arms and light weapons' (55/33 Q)
  - *EU Member States* co-sponsored

- 'Assistance to States for curbing illicit traffic in small arms and collecting them' (55/33 F)
  - *EU Member States* co-sponsored
- 'Relationship between disarmament and development' (55/33 L)
  - adopted by consensus

#### II.D.3. *The Organisation for Security and Cooperation in Europe*

EU Member States have participated actively in the work of the OSCE in the field of SALW, which has, *inter alia*, resulted in the adoption of the OSCE document on SALW, at the OSCE Ministerial Conference of 24 November 2000. The United Kingdom coordinated negotiations through its Chairmanship of Working Group B of the Forum for Security Cooperation. The Document is a significant regional contribution to combating the proliferation and misuse of SALW and a major confidence-building step towards the 2001 UN Conference. The United Kingdom has also provided support to the OSCE Secretariat in this context.

#### II.D.4. *The Economic Community of West African States*

*Sweden* is represented in the PCASED Advisory Group. See further section II.B.2 above on Member States' financial support for ECOWAS and PCASED.

#### II.D.5. *The Wassenaar Arrangement*

The EU Member States participated actively in the work of the Wassenaar Arrangement. For example, the *United Kingdom* has encouraged ongoing discussion in the Wassenaar Arrangement about the desirability and feasibility of including SALW transfers in the information exchanges between participating States.

#### II.D.6. *Southern African Development Community*

In regular bilateral contacts with SADC States, including at ministerial level, the *United Kingdom* has supported efforts to bolster the EU/SADC process and the implementation of the EU/SADC regional action programme.

#### II.D.7. *The Euro-Atlantic Partnership Council and the North Atlantic Treaty Organisation*

EU Member States participate actively in the work of the EAPC. Until May 2000 the United Kingdom chaired the EAPC/NATO Ad Hoc Working Group on SALW.

#### II.D.8. *Other*

The issue of SALW is regularly dealt with in the political dialogue meetings at expert level with the associated countries

### PART III

#### PRIORITIES FOR THE FUTURE ASSISTANCE OF THE EUROPEAN UNION

##### III.A. **Priority guidelines**

The EU can make an important contribution towards eradicating the problems caused by destabilising and uncontrolled spread of SALW. Working towards the elimination of this source of destabilisation and conflict will be a great contribution to preventing future conflicts. The actions already taken by the EU represent important steps in this regard and should be followed up by determined efforts in the same direction. The adoption by the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, of a programme of action to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects would add to the commitment taken earlier by the EU through its Joint Action on small arms.

With a view to improving and deepening the implementation of the Joint Action and the programme, Member States have identified a number of guidelines on issues on which decisions should be taken or to which attention should be given in the near future. These guidelines will obviously be subject to periodical reviews, according to the experience accumulated in the process of implementing EU projects

##### III.B. **The need for a comprehensive approach**

Although there is a wide recognition that further international actions should be taken to deal with the problems of SALW, there are many complex factors and processes that need to be taken into account, such as international and internal security, trade, civil/military relations and the role of weapons in society. These problems cannot be solved by one quick fix. They must be addressed through a comprehensive approach dealing with the different aspects of the problem - which might differ from region to region - and the solutions must be sought through a wide range of agreed measures. Member States agreed that such efforts should aim both at the reduction of existing destabilising accumulations and at the prevention of further uncontrolled spread of these weapons. Through assistance, local capacities to address these issues can be strengthened.

As regards financial support to SALW related projects, the objective of the EU will be to strengthen the efforts to reduce the availability and supply of SALW to areas of conflict or

potential conflict, to help to develop a range of international measures to limit the demand for SALW in such areas, and to help governments to cope with the problems these weapons cause. Such measures can be taken by the EU or at the Member State level, and by acting through the appropriate regional or global institutions. The respective efforts of the Member States and of the Commission will aim for complementarity, and reflect the ambition to deal with the different aspects of the small arms problem at the national, sub-regional, regional and global level.

##### III.C. **The need for targeted action**

Countries with high levels of insecurity or violence cannot make effective use of development assistance. Therefore, assistance to conflict-prone countries or regions should be provided to promote security, disarmament, demobilisation and reintegration into the society of ex-combatants as an integrated part of social and economic development programmes.

In those cases where the governments are actively concerned with reducing the arms flow into and circulation of SALW within their region, the EU should cooperate with them in this task. In practice, recipient governments may lack the capacity to implement their own control programmes. Therefore, the EU is prepared to consider providing practical support for initiatives such as capacity building and training, awareness raising etc.

##### III.D. **The need for criteria for allocation of funds**

Assistance from the EU for the projects that have been supported up to now have been decided on an ad hoc basis. To ensure that all future projects are comprehensive and targeted, the Member States have identified the following basic criteria, against which the EU will make a preliminary assessment of applications.

- Assistance by the EU in the field of SALW must be based on a genuine political will in the recipient State.
- Assistance projects will be based on close cooperation with the authorities in the recipient State and the role of different actors should be defined.
- The proposed projects will enhance either local, national or regional security within the recipient State/region (e.g. contribute to control of small arms, confidence building measures, reconciliation, regional stability).

- In projects, which include a weapons collection component, all weapons collected should, in principle, be destroyed.
- Assistance in the field of SALW should be part of an overall development and security strategy with regard to the recipient country. In cases where this is not possible, the project proposal should outline how this activity will contribute to integrating SALW policy into wider security and development policy.
- For each project, clear objectives will be established and bench marks and time lines identified, so as to make it possible to assess impact of the project.
- Requests for assistance should clearly state how the proposed project will further the aims and objectives of the EU Joint Action.
- Requests for assistance should clearly state how the proposed project would enhance the recipient State's ability to implement existing regional or international commitments.

EU Member States and the Commission will engage in a dialogue within the relevant working groups with a view to developing or deepening common criteria for EU projects.

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### III.E. The need for thorough assessment and evaluation

It is important that the projects supported by EU funds are thoroughly assessed and evaluated. Measures to achieve this include:

- The implementation of the projects should be according to sound principles of financial management.
- A final report will be submitted at the end of a project, summarising the results achieved.
- An assessment will be made in order to evaluate if its objectives have been reached and if a follow-up is needed. Such an assessment will be made at least towards the end of the project. Projects, which are implemented over a long period of time, or to which the financial contribution of the European Union is important, will be assessed also during the period of implementation.
- The assessment will be carried out by independent experts.
- The final report and the assessment will also be used to identify lessons to be learned for future projects.

(Acts adopted pursuant to Title VI of the Treaty on European Union)

**Final Report on the first evaluation exercise — mutual legal assistance in criminal matters <sup>(1)</sup>**

(2001/C 216/02)

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<sup>(1)</sup> Approved by the Council on 28 May 2001.

**SUMMARY**

The evaluation procedure has demonstrated that the mechanism itself has proved its usefulness and that in the course of the process significant improvements have been made, both at practical and at legislative level. The authorities of the Member States cooperated fully and positively with the evaluation teams. The European Union should continue to employ the mutual evaluation mechanism and ensure that full use is made of it.

From the evaluations two quantitative findings emerged:

- the flow of mutual assistance is increasing. All the Member States have reported this, and some have had to obtain additional resources or find ways of dealing with that aspect of mutual assistance;
- most of the mutual assistance flow concerns cooperation between the Member States of the European Union (estimated at between 75 % and 95 %).

The evaluation exercise made it clear that, while mutual assistance is not without its faults, the criticism habitually levelled at it that it is slow, inefficient and powerless is excessive; in general mutual assistance does not operate as badly as it is reputed to do. In the field of drugs or serious offences under ordinary criminal law, a great majority of the practitioners interviewed consider that mutual assistance operates efficiently and to the satisfaction of practitioners. Moreover, the persons involved in mutual legal assistance are devoted and conscientious practitioners who seek to assist foreign authorities in the best manner possible, sometimes under difficult material conditions. This finding, while not invalidating the criticism of the current operation of mutual assistance, does moderate it.

Mutual assistance can, however, be improved in many areas:

- staff and material and budgetary resources are insufficient to meet requirements and should be more in line with the needs of today;
- insufficient language knowledge remains an obstacle to improving mutual assistance and to direct communication between judicial authorities; there is considerable need for training in this area;
- there is a considerable burden of outdated practice and pointless red tape and hierarchical complexity; the result is to slow down the transmission and execution of international requests; the solution would be to simplify the channels and streamline the procedures;
- it is imperative to train specialists in mutual assistance;

- a legal complexity arises from the accumulation of international and national rules to be applied in the same case; basic training in this matter for those involved in mutual legal assistance is essential;
- there are major discrepancies between the Member States as to the application of Conventions; a better policy of guidelines (whatever the method of establishing them and whatever their legal status) should be put in place;
- requests for mutual assistance based on offences which may be categorised as tax offences give rise to problems; it is desirable to remedy this for the future;
- conventions sometimes take longer to ratify than is justified on purely technical grounds; speedier ratifications are indispensable;
- double criminality remains a potential ground for rejecting requests when the measure requested is coercive; the European Union should continue to discuss this matter;
- the exercise of rights of appeal should not be able to be used for delaying purposes;
- use of good practice should be implemented carefully in the Member States and should be monitored by the European Judicial Network;
- statutes of limitation under the law of the requested State should no longer be an obstacle to the execution of requests;

and, finally, as a general lesson to be drawn,

- the high concentration of mutual assistance within the European Union itself should encourage further use of a specific approach to mutual assistance between the Member States in the area of freedom, security and justice, in particular as it is likely that this aspect might become of growing importance with the enlargement of the European Union.

**I. INTRODUCTION**

Pursuant to Article 8(5) and Article 10 of the Joint Action of 5 December 1997 <sup>(1)</sup>, establishing a mechanism for evaluating the application and implementation at national level of

<sup>(1)</sup> Article 8(5): 'At the end of a complete evaluation exercise, the Council shall take the appropriate measures.'  
Article 10: 'No later than at the end of the first evaluation of all the Member States, the Council shall examine the detailed rules and scope of the mechanism and shall, if appropriate, make adjustments to this Joint Action.'



international undertakings in the fight against organised crime, this report endeavours to draw conclusions relating to the first evaluation exercise, with a view to enabling the Council to take the decisions incumbent upon it.

The first evaluation exercise addressed delays in the operation of the system for mutual legal assistance and urgent requests for the seizure of assets.

This report is based on the individual evaluation reports, the intermediate reports and discussions of those reports in the Multidisciplinary Group. Its purpose is not to reproduce the individual recommendations made to the Member States. It endeavours to highlight the main questions identified in the course of the exercise, identify good practice, analyse it and, where appropriate, propose action in the form of recommendations either to the European Union or to the Member States themselves depending on the case. These recommendations are of course not all of the same importance and one should therefore take this into account when examining the present report.

## II. GENERAL OBSERVATIONS

The Member States have received individual recommendations in each evaluation but the overall results of the evaluation of Member States' systems of mutual assistance in criminal matters are also of major interest to the European Union. They make it possible in particular to assess whether the difficulties recorded, and indeed the often severe criticisms levelled in recent years at the slowness and inefficiency of this form of cooperation, are well-founded and, if so, to what extent.

Over the past five to eight years the question of mutual assistance has been discussed intensively within the European Union and its Member States. Comments and criticisms have been voiced from different sources and vary depending on whether they are from practitioners or from academics. The matter has also been given increased attention in national parliaments and in the European Parliament.

In the Action Plan of 28 April 1997 to combat organised crime, adopted by the European Council at Amsterdam, starting from the assertion that judicial cooperation needs to be brought up to a comparable level to police cooperation, the High Level Group advocated research and solutions to facilitate mutual assistance, setting up a European Judicial Network promoting direct communication between judicial authorities and improving forms of cooperation which would help to combat organised crime. The Action Plan proposed also the setting up of the mutual evaluation mechanism on which this report is based.

*The first finding* to be drawn from the 15 evaluations is that, while mutual assistance does not have the level of perfection and reliability expected by many practitioners, it does not operate as badly as some claim. In the field of drugs or serious offences under ordinary criminal law, a majority of the practitioners interviewed consider that mutual assistance operates more efficiently than it is reputed to do. For example, the evaluations made it clear that the alleged lack of direct communication between one judicial authority and another does not correspond to the facts. Even if the central authorities were in almost every instance unable to provide statistics for the flow of mutual assistance under Article 53 of the 1990 Convention applying the 1985 Schengen Agreement (hereinafter called the '1990 Schengen Convention') the evaluations indicate that direct communication between judicial authorities is current practice, and one that is on the increase. That finding, while not invalidating all of the criticism of the current operation of mutual assistance, does moderate it. However, in the interests of accuracy, it must be said that, while mutual assistance does not operate as poorly as it is reputed to do, there are still areas of difficulty, for instance tax questions and certain types of economic crime.

*Secondly*, the evaluations have demonstrated that even if the statistics are not totally reliable, most requests for mutual assistance are between Member States of the European Union, the proportion ranging between 75 % and 95 %. Moreover, almost all of the remaining requests concern candidate States, which will accede to the Union sooner or later. The conclusion to be drawn is that in this area there is a dimension specific to the Union, in its present or future configuration. This fact in its turn leads to the conclusion that it is worthwhile for the Union to have its own instruments and continue to develop practices specific to the area of freedom, security and justice. The move has already begun with the Convention on mutual assistance in criminal matters from 29 May 2000 between the Member States of the European Union (hereinafter called the '2000 Convention'), which is complementary to the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters (hereinafter called the '1959 European Convention'). Work is also at present being carried out, based on a French initiative, in the Working Party on Cooperation in Criminal Matters on elaborating another instrument in the field, focusing on economic crime. This approach deserves to be pursued and taken further.

*The third finding* relates to the implementation of the instruments. The experts noted that, 40 years after adoption, the reference Convention — the 1959 European Convention — is not applied in a uniform manner either between the Member States or within a Member State. There is thus a real problem of consistency, which needs to be resolved.

*A fourth finding* concerns the added complexity surrounding legal problems as a result of outdated practices, administrative routines and bureaucratic hierarchy. It is obvious that

improved mutual assistance means updating operational methods inherited from the past and making action more flexible.

The fifth general finding relates to language usage. The fact that the vast majority of judicial authorities are unable to express themselves correctly and in legal terms in a language other than their own greatly limits the scope of the provisions on direct communications. Only increased language training sustained over time will remove that obstacle.

The sixth, and last, finding concerns flows of mutual assistance: they are on the increase. A general increase has been observed by all the Member States but the proportion varies, depending on the State and the circumstances, there is one certainty: the upward trend in requests for mutual legal assistance.

### III. SPECIFIC OBSERVATIONS

#### (a) Ratification of international conventions

As mentioned in the questionnaire which was the basis for the evaluation exercise, the evaluation concerns mutual assistance between Member States within the framework of the 1959 European Convention and its 1978 Protocol, the 1962 Benelux Treaty on Extradition and Mutual Assistance in Criminal Matters and its 1974 Protocol, the 1990 Schengen Convention and other relevant treaties or arrangements, such as the 1990 Convention on Laundering, Search, Seizure and the Confiscation of the Proceeds from Crime (hereinafter called the '1990 Money Laundering Convention').

While all the Member States of the European Union have ratified the 1959 European Convention, the 1978 Protocol (on facilitating mutual assistance in fiscal matters) is not yet ratified by one Member State and was ratified by another only in 2000. The 1990 Money Laundering Convention has been ratified by 14 of the Member States of the Union. Apart from those specific cases, the experts noted that it nearly always took a long time (often more than five years and sometimes up to twenty years) to ratify conventions.

The European Union has already stated its concern regarding the time taken to ratify instruments. It did so in the Action Plan of 28 April 1997 to combat organised crime (recommendations 13 and 14); the target date set then was the end of 1998. It did so again in recommendation 27 of the document on 'The prevention and control of organised crime:

a European Union strategy for the beginning of the new millennium' <sup>(1)</sup>, setting a target date for the end of 2001 and priority 1. The 2000 Convention invites the Member States to begin the procedure of ratification of the Convention before 1 January 2001.

The evaluations demonstrated how important it is that there be no gaps in the area of mutual assistance conventions since any failure to ratify may prevent or dilute mutual assistance.

**Recommendation 1:** The Council urges the Member States to devote particular attention to ratifying, in compliance with their constitutional requirements international instruments which facilitate mutual assistance in criminal matters within a reasonable period. Special attention should be given to an early ratification of the 2000 Convention. The Presidency of the Council should write to its counterparts, asking them to report to the Council before 1 October 2001 on their reasons for not ratifying conventions. Those reports could form the basis for discussion in the Council under the Belgian Presidency.

#### (b) Statutes of limitation

The evaluations revealed that in some Member States the judicial authorities did not execute a request where it appeared that the offences on the basis of which it was made would be covered by the statutes of limitation under its own law. In a 1999 law on international judicial cooperation, one Member State reaffirmed the principle that cooperation is not possible if criminal proceedings are barred by the statutes of limitation except where a convention expressly provides to the contrary.

It is not an explicit ground for refusal in the 1959 European Convention that the offence giving rise to the request is barred by statutes of limitations in the requested State. This is, however, the case in the 1957 European Convention on Extradition. In that area the Member States have taken one step further. Pursuant to the 1996 Convention on Extradition between the Member States of the European Union, extradition may not be refused on the ground that the prosecution would be statute-barred according to the law of the requested Member State. The *raison d'être* to keep this ground for refusal regarding mutual legal assistance should be questioned.

**Recommendation 2:** The Council invites the Member States to review their national legislation and practises with a view to ensuring that a request for mutual legal assistance from another Member State is not refused solely on the ground that the offence giving rise to the request is barred by statutes of limitations in the requested Member State.

#### (c) Grounds for refusal

The evaluations revealed that, of the four grounds of refusal listed in Article 2(b) of the 1959 European Convention, three

<sup>(1)</sup> OJ C 124, 3.5.2000, p. 1.

(sovereignty, security, *ordre public*) are only rarely invoked to refuse a request from another Member State of the Union. Essential interests are a different matter. At least one Member State referred to its essential interests as grounds for making it compulsory for requests relating to a search or seizure in a bank to be checked by the Ministry of Justice before action is taken, although it appears that this practice has been changed through recent legislation as a result of the evaluations.

In the current state of development of international instruments, an assessment made by the executive on the basis of Article 2(b) is a unilateral decision with an undisputably political dimension since it relates to protecting a State's sovereignty. The evaluations did, however, demonstrate that mutual assistance is now developing in an increasingly judicial framework, as evidenced by the direct communication between judicial authorities in the Member States provided for in the 1990 Schengen Convention and in the 2000 Convention, and as promoted and facilitated by the European Judicial Network. That ambivalence between political assessment and examination by the judicial authorities has been analysed in several evaluations as a cause of delay in execution and a source of confusion regarding allocation of responsibilities between ministries and judicial authorities.

The draft instrument that at present is being considered in the Working Party on Cooperation in Criminal Matters includes a proposal to limit the application of Article 2(b) of the 1959 European Convention.

**The Council notes** that work is being carried out in the Working Party on Cooperation in Criminal Matters on grounds for refusal. In that context, proposals have been made to limit between the Member States the application of the grounds for refusal in Article 2(b) of the 1959 European Convention.

#### (d) *Tracing of bank accounts*

An effective means of combating crime, the restraint and, where appropriate, confiscation of assets and property presuppose their prior identification and tracing. It emerged in the course of the evaluations that a number of Member States would agree to a request for mutual assistance involving interim protective and coercive measures in respect of property and assets only if the latter were completely identified. But this is precisely the stumbling block in combating crime as frequently the identification is incomplete. It even happens that the property is quite simply in the name of a third party. The evaluators commented that Member States offered only limited means of tracing the least well identified assets, and some refused to undertake investigations, which they considered were too broad in scope and which they described as 'fishing expeditions'. This mainly applies to bank accounts. The experts noted that practitioners in some

Member States thought that such requests could be executed efficiently if the requested Member State had a centralised register of all bank accounts rather than having to request all bank institutions in the country. On the other hand it must be recognised that certain Member States who do not have a centralised register of all bank accounts could have difficulties to provide such information.

Those operating in this area know that it is not easy to identify, detect and designate a bank account opened in another Member State, but it happens fairly frequently that they know of its existence without having sufficiently precise information to pinpoint the bank where it was opened.

The draft instrument that at present is being considered in the Working Party on Cooperation in Criminal Matters includes a proposal relating to the provision upon request by another Member State of a list of the bank accounts of a natural or legal person.

**Recommendation 3:** The Council notes with satisfaction that work is being carried out in the Working Party on Cooperation in Criminal Matters on an expedited procedure for tracing bank accounts of natural or legal persons and requests the Working Party to seek satisfactory solutions to this matter as quickly as possible.

#### (e) *Tax offences*

The evaluations showed that the issue of tax offences remained such a sensitive one that mutual assistance could, on this basis be limited and slowed down or at worst be refused.

The experts observed that 14 Member States have ratified the Additional Protocol to the 1959 European Convention of 17 March 1978 while one Member State had not yet done so. Furthermore, of the Member States which had ratified the Protocol, there were many which maintained requirements for dual criminality, for proportionality, and for speciality, mostly expressed through reservations and declarations to the Protocol.

This situation is all the more unfortunate in that certain aspects of organised crime also come within the scope of taxation, such as cigarette smuggling. It would be regrettable if a measure of restraint against a bank account harbouring the proceeds of this type of activity could not be executed on the grounds that the offence concerned taxation.

The draft instrument that at present is being considered in the Working Party on Cooperation in Criminal Matters includes a provision according to which a request for mutual assistance may not be refused on the ground that the request concerns a fiscal offence.

**The Council notes**, with satisfaction that work is being carried out in the Working Party on Cooperation in Criminal Matters with a view to ensure that requests for mutual legal assistance are not refused on the ground that the offence is a fiscal offence.

(f) *Double criminality*

The experts systematically examined the question of double criminality, which is sometimes invoked as a ground for not responding to requests for mutual assistance or for not sending a request at all. They found that that condition took different forms in different Member States and was used to varying degrees.

Nevertheless, they noted that:

- the evaluations did not lead to the conclusion that double criminality is a major restraint on mutual assistance since in most cases the crimes for which requests were made constituted serious crimes for which Member States have fairly similar legislation (drugs, crimes of violence, swindling, etc.),
- opinions differ as to whether and to what extent the requirement causes problems in practice,
- practices vary significantly from one country to another and even from one court to another,
- the mere existence of the rule leads some judicial authorities not to send out requests because they know in advance that their request will be rejected.

In addition to these general remarks, some more specific observations may be made.

The first relates to the fact that the very concept of double criminality is not carved in stone; where it exists, it is almost always envisaged with flexibility, not as a requirement that the elements constituting an offence be exactly the same in the law of the requesting and requested State, but frequently as a mere question of *double punishability*, which is an approach focusing more on the offences than on the law. Double punishability means inquiring whether there is in the law of the requested State an offence of the same nature which allows a charge to be brought even if it does not correspond exactly to the legal definition of the offence on the basis of which the request is made.

The second observation is that despite that variable approach, often described as an assessment *in concreto*, double criminality remains to a considerable extent a condition of admissibility for the request that, even if in most cases fulfilled, needs to be checked in each case. It is hence not only a potential obstacle to mutual assistance, but may also imply an additional time-consuming element in the procedure. The experts also

noted that one Member State considers that the double criminality requirement extends as far as taking into consideration the extenuating circumstances surrounding the offence on which the request is based. That approach considerably extends the scope of the legal requirements and is by its nature liable to prevent the provision of mutual assistance.

A third observation relates to the fact that in many Member States double criminality is analysed differently depending on the person in charge of executing the request; that demonstrates the uncertainty in which the requesting authorities are left. Thus in one Member State it became apparent that one court executing requests had a much stricter concept of the double criminality requirement than the central authority.

The fourth observation is that the double criminality requirement is analysed more strictly when the request relates to a coercive measure. The fact is that searches and seizures, coercive measures *par excellence*, are essential to the fight against organised crime both to obtain evidence and to stop the assets of the most enterprising international criminals. It was noted, however, that one Member State never applies the double criminality rule vis-à-vis Member States of the Union even where there is a request for search and seizure.

The question of double criminality should become less acute as harmonisation of substantive criminal laws develops within the European Union, even though an observation from the evaluations is that double criminality could be a potential obstacle to mutual assistance, principally where coercive measures are requested.

The draft instrument that at present is being considered in the Working Party on Cooperation in Criminal Matters includes a proposal relating to the double criminality requirement in relation to requests for search and seizure.

**Recommendation 4:** The Council notes that double criminality remains topical among Member States and recommends continued discussion on this subject.

(g) *Procedure*

Compatibility between laws on criminal procedure in Member States remains a sensitive issue. The principle is that the requested State applies its own laws in executing the request. For example, the evaluators remarked that the judicial authorities of one Member State could tolerate the presence of a defence lawyer at the hearing, whereas other judicial

authorities of the same Member State categorically refused to do so, citing their laws on criminal procedure, which did not so provide. Certain Member States have already introduced provisions into their national law on the question of international cooperation making it possible to apply the law of the requesting State, if so requested. The 2000 Convention includes a provision that the requested State shall comply with the formalities and procedures expressly indicated by the requesting Member State provided that such formalities and procedures are not contrary to the fundamental principles of law in the requested Member State.

All the evaluations devoted time to the internal procedure in the central authorities and other authorities that take part when executing a request for mutual legal assistance. The experts found timeworn bureaucratic practices, which were not in line with the increasing needs arising from a steady and significant increase in the flow of requests. In several Member States the work of the prosecutors is rendered cumbersome by a bureaucratic hierarchy, which slows the dispatch of requests for mutual assistance considerably even when the Member State's laws authorise prosecutors to establish and dispatch them themselves. Evaluations showed that the delays attributable to pointless routing through hierarchical channels could run to weeks or even months.

These administrative routines are not in line with the provisions of the 1990 Schengen Convention and the 2000 Convention. Less formal hierarchy and more individual responsibility appear indispensable.

In several of the Member States evaluated, the cumbersome bureaucratic channels through which requests are passed from the central authority to the staff responsible for executing them struck the experts. In most instances, the justification for that long, slow progression is the need for control. Yet it became apparent that this succession of filters did not ensure real control of the execution of the requests. Genuine control actually takes place either when the request arrives at the central authority or at the level of the judicial authority executing it. To save precious time, responsibility for control should in cases relating to the European Union be vested in a single authority, which in most Member States would be the judicial authority executing the request.

Several requests received by a Member State relate to service of documents and not to obtaining evidence in a criminal proceeding. Even if the service of documents may have great importance for the addressee or the authority that issue the documents they do not require the same complex measures by the requested Member State as other requests for mutual legal assistance. The evaluations showed that service of documents and other requests for mutual legal assistance often were dealt with in the same manner even though the service of documents could be dealt with less formally and thus more quickly.

In this context it should be noted that the experts were impressed with the informal approach to judicial cooperation, which existed in certain Member States. This approach was achieved with a minimum of formality and appeared to be successful. Since the entry into force of the 1990 Schengen Convention this informal approach is finding its way between the judicial authorities, although the situation may still be improved.

**The Council reiterates** its earlier recommendation of an early ratification of the 2000 Convention, which provides in general for direct contacts and direct transmissions of documents to be served. The Convention also calls on the authorities of the requested Member State to accept a procedure even if it is unfamiliar. This will no doubt entail that the difficulties in general with incompatibility between laws on criminal procedure will become less significant.

**Recommendation 5:** The Council calls upon the Member States to:

- rationalise the internal procedures and the administrative path and to eliminate red tape in the authorities dealing with mutual legal assistance by defining exact lines of demarcation and specific tasks, simplifying the role of the hierarchy and making the officials concerned responsible. The objective is to achieve a flexible and dynamic service; the informal approach developed in some Member States should be taken into consideration.
- ensure that a request for a specific measure from another Member State will not be executed in a less efficient way than a measure in a domestic case.

*(h) Rights of appeal*

Although they rarely have suspensive effect, rights of appeal offered by the requested Member State may considerably slow the transmission of material to the requesting authorities, thereby delaying both the analysis and exploitation by the requesting judicial authority. The evaluators noted, for example, that the procedural system in one Member State offered a right of appeal to any person having an interest. That facility had been abused by some defendants for delaying purposes and the Member State acknowledged the situation and had recently amended its legislation to restrict such abuse.

In another Member State a bank may exercise a right of appeal against a decision to seize an account and in a third Member State appeal procedures have suspensive effects. If it is to be assumed that the Member States of the European Union have confidence in one another's legal systems and that mutual assistance is granted in the interests of the requesting Member

State, consideration should be given to limiting rights of appeal in the requested Member State or, at least, removing their suspensive effect while not losing sight of the question of fundamental rights.

**Recommendation 6:** The Council calls upon the Member States to examine their national procedural provisions in order to prevent rights of appeal from being used for delaying purposes.

(i) *Financial crimes — specialised units*

The evaluations showed that several Member States have set up special units or established specific procedures with the aim of enhancing the fight against financial crime and improving the confiscation of the proceeds of crime. These units contain experts from different areas and field of experiences and this approach has in several Member States proved to be a successful tool in combating financial crime.

**Recommendation 7:** The Council calls upon the Member States to examine their structures relating to investigations into financial crime with a view to drawing on best practises on how other Member States are organised and examining if it is necessary to reorganise their own structures in order to improve cooperation between the Member States.

(j) *Transfer of materials*

In some Member States material or objects seized following a decision of a court, acting on the basis of a request from the requesting court, is not transferred directly. Quite frequently, a judicial authority must examine whether all of the seized objects and documents actually relate to the criminal offences defined in the requests and, if necessary, remove those which do not.

The evaluations concluded that this additional stage in the transfer of material relating to the execution of the requests was a pointless requirement, which could hardly be regarded as providing additional guarantees, and was therefore simply a cause of delay. Moreover, this procedural stage is often covered by old legislation and the Member States concerned acknowledged that.

This aspect of the problem is to be viewed in conjunction with the previous recommendations relating to simplifying the procedure, reducing the number of instances involved and making the judicial authority executing the requests responsible, thus avoiding any 'over-bureaucratisation' of mutual assistance.

**Recommendation 8:** The Council calls upon the Member States to simplify the procedure for transfer of material to the requesting Member State by dispensing with multiple controls.

(k) *Standard forms and computerised systems for outgoing requests*

Several experts recommended the Member States to take all necessary initiatives to improve the quality of requests for mutual legal assistance in order to avoid requests from being misunderstood and in the long run facilitate mutual legal assistance.

The experts were also impressed by the development of computerised systems in some Member States in dealing with requests for mutual legal assistance, which in particular could be one way of improving the quality of outgoing requests. Particularly in one Member State the use of computers was found to be a powerful tool for all of those involved in the preparation of requests.

**Recommendation 9:** The Council calls upon the European Judicial Network to continue the further development of a standard form for outgoing requests aiming at facilitating mutual assistance and make it available as soon as possible. The Council also recommends the Member States to examine the potential within their own country for a computerised system for the drafting of outgoing requests and coordinate these efforts at EU level, possibly with Community funding,

(l) *Good practice*

The evaluation exercise had already begun several months before the European Union adopted the Joint Action on good practice in mutual legal assistance in criminal matters. That did not prevent the evaluators from checking that the provisions of that Joint Action were actually being implemented. Their finding was that the 15 Member States had made the statements provided for in the Joint Action of 29 June 1998.

It is difficult to check whether in practice the judicial authorities now take care to indicate in requests all the telephone numbers and electronic addresses for direct contact and whether other points of good practice are applied. In view of the major advantage, which respect for good practice offers, the Member States must devote special attention to it.

**Recommendation 10:** The Council invites the Member States to assess the respect for the measures set out in the Joint Action of 29 June 1998 on good practice in mutual legal assistance in criminal matters. The European Judicial Network contact points could assist by notifying their own judicial authorities or their counterparts in the Network of any failings encountered.

(m) *Urgent requests*

The judicial authorities or officials of the central authorities in several Member States complained of abuse of the 'urgency' mark, which is seen as a way of having requests dealt with as

soon as possible. There is often no explanation of the grounds, which led the requesting authority to mark the case 'urgent' even if no reason for urgency could be deduced from examination of the file and material.

Notwithstanding that, the requested State, on the grounds that it is not for it to assess the advisability of the measures requested by the requesting State, nearly always takes action within the deadline requested.

That situation is unsatisfactory because it further delays the execution of requests, which are not marked urgent and discredits the use of the urgency mark.

The Joint Action of 29 June 1998 on good practice in mutual legal assistance in criminal matters includes an obligation for Member States to ensure that, where a request is marked 'urgent', to explain the reasons for the urgency and not to mark as 'urgent' requests which are of minor importance.

**The Council** stresses the importance of a full implementation of the Joint Action of 29 June 1998 referred to in Recommendation 10, in particular as regards urgent requests.

*(n) Guidelines*

The evaluations showed that dissimilar practices could develop on the territory of a Member State with regard to the execution of incoming requests. The experts noted, for example, differences in the interpretation of national rules.

Such differences have great disadvantages and also make it difficult to obtain a clear picture of mutual assistance in the Member State concerned. The use of guidelines to ensure unified approaches and practices would be a logical solution. Moreover, the use of such guidelines is certainly a simple way of ensuring that good practice in mutual assistance becomes widespread.

**Recommendation 11:** The Council encourages the Member States to issue guidelines, through the means which are in line with their constitutional traditions, to their judicial authorities to ensure the dissemination of homogeneous practices.

*(o) The role of the central authority*

Pursuant to Article 15(1) of the 1959 European Convention, the normal method for transmission of requests is between the ministries of Justice. In most Member States the Ministry of

Justice has become a central point, which ensures the proper distribution and execution of requests sent to it. The evaluations have revealed that these central points have varying levels of control: in some Member States they merely ensure proper transmission and receipt of requests, while in other Member States they are more involved in the execution of the request.

Given the developments in Mutual Legal Assistance envisaged by the new international instruments, such as the 1990 Schengen Convention and the 2000 Convention it was confirmed in the evaluations that it is necessary for most Member States to revisit the concept of a central unit as it has developed within the Member States and to seek to clarify the role that such a central unit should play, in particular in relation to other Member States of the European Union. Within some Member States already, a majority of requests are bypassing the central authority, and this trend can only continue and indeed increase over the coming years, in particular taking account that the evaluations seem to indicate that some of 75 % to 95 % of all requests for mutual legal assistance concern the Member States of the European Union. Against the move towards decentralisation must be weighed the fact that reductions of the capability of the central authority could have an influence on the effectiveness of mutual legal assistance with countries that are not Member States. The central authorities could also play a important role in assisting candidate countries in the process of developing judicial cooperation in criminal matters, as well as in relation to third countries with which the European Union intends to develop closer cooperative links. Through the promotion of an active policy of direct contacts between judicial authorities among Member States, resources will be freed in central authorities for planning, training, more difficult cases of mutual legal assistance and central coordination and international negotiations.

**Recommendation 12:** The Council calls upon the relevant Working Party to discuss the role of the central authority and how this central unit, despite the moves towards decentralisation, could maintain an effective role, and examine whether there are any functions, such as overall guidance and monitoring, which central authorities are best placed to perform in the developing scenarios.

*(p) European Judicial Network*

The evaluations have confirmed that the European Judicial Network is playing an important role more and more in speeding up the execution of mutual legal assistance requests and in ensuring better cooperation between investigators both at judicial and law enforcement level. The European Judicial Network is considered by practitioners to be one of the major developments in the European Union for ensuring better judicial cooperation and more efficient fight against serious forms of crime. It has also led to a far better understanding of each other systems.

However, it has been noted in the evaluations that important efforts are still needed at national as well as European Union level and that there is a need to make the Network better known to practitioners.

**Recommendation 13:** The Council calls upon the Member States and the European Judicial Network to make the Network more widely known to the judicial authorities in the Member States and remind them of the advantages to make more extensive use of the Network's contact points, especially in urgent cases.

**Recommendation 14:** The Council calls upon the Member States to provide the European Judicial Network contact points with all necessary resources and training, and insists on the speedy implementation of the Council decision <sup>(1)</sup> to provide the contact points with Intranet facilities as well as a secure e-mail.

*(q) Direct communications*

According to Article 53 of the 1990 Schengen Convention requests for mutual assistance in criminal matters may be made directly between the judicial authorities. In the 2000 Convention direct communications is made mandatory with some exceptions. The evaluations revealed that in most Member States direct transmission of requests, even if available, is not enough put in practice. The reasons for this differ but generally practitioners at operational level seem not to be familiar with these new channels. The evaluations showed that the practitioners in several Member States were of the opinion that requests that go through ministries or other channels create significant delays and that direct transmission of requests considerably improve practical cooperation.

**Recommendation 15:** In reiterating the need for an early ratification of the 2000 Convention the Council calls upon the Member States to promote and support the direct communication between judicial authorities of requests for mutual legal assistance in accordance with the provisions of the Convention. In this respect, the implementation of the European Judicial Atlas will play an instrumental role.

*(r) Record keeping*

In all the evaluations the experts found shortcomings in the Member States regarding the record keeping and control of incoming and outgoing requests. Most Member States could not provide a clear picture of the actual situation regarding number of cases pending, cases completed, outgoing and incoming requests, the time involved in executing the requests,

etc. The evaluations showed that automatic issue reminders, notification of partial or full execution to the requesting authorities, did not always follow up the requests for mutual legal assistance.

The recording and control of figures should not be justified in itself, but may be seen as a useful method by which a Member State may acquire a complete knowledge of the system it is operating and the demands being put on it. It is not merely a question of knowing how many cases are going in and out of a country. A better knowledge of the figures gives a Member State the ability to determine whether all parts of a system are able to cope with the demands being put on them and ensure effective coordination of the resources.

**Recommendation 16:** The Council calls upon the Member States to install and use a computerised system for record keeping in order to give a clearer picture of the actual situation regarding mutual assistance and enable a better monitoring and follow-up for each case.

*(s) Resources*

The evaluations revealed that there is a general problem of resources and tools both in the central administrations and in the judicial authorities. Until recently the flow of mutual assistance was limited. But the regular increase related directly to greater mobility and the extension of the economic field has led to an increasing mismatch between the tools and resources of another age and today's needs. The experts concur with that finding regarding the increase in flows.

Of the Member States evaluated, some have been forced to react vigorously to make good a lag, which, over time, has become structural. While this effort is to be applauded, the experts are looking to the future and asking whether there is a need not only to make up for time lost but also to take steps to ensure that the means really do match the end. The question can no longer be approached in purely reactive terms; it has become essential to think and formulate forward-looking mutual assistance policies, which make provision in particular for the allocation of means and resources vital for the smooth and efficient management of these matters. This approach is all the more essential as major crime is steadily increasing, so the situation is unlikely to improve. As an example, the evaluators noted the shortage of computers, the use of out-of-date software which inhibited high performance, the rarity of mobile telephones and portable computers amongst officials dealing with these matters, etc. Finally, premises sometimes proved to be in poor condition and almost always unsuitable.

<sup>(1)</sup> A decision was taken on 11 January 2001 to implement the pilot project concerning the virtual private network with a view to it becoming operational in August 2001.



The evaluators also looked at travels by magistrates and police officers abroad to monitor and follow-up the execution of requests. The general finding was that there was a complete lack of flexibility and that resources for missions abroad were restricted owing to the strong suspicion of 'administrative tourism'. The lack of flexibility was mainly attributable to the fact that the final decision to authorise a mission often went right up through the hierarchy, sometimes as far as the Minister in person. The type of international investigations which police and judicial authorities were likely to encounter these days (cross-border trafficking in migrants, drugs, etc.) calls for swift reaction incompatible with cumbersome bureaucratic procedures. The restriction on resources showed that the methods employed belonged to another age. The need to give the authorities the means to carry out their activities must now be recognised.

Reports obtained during evaluations from those active in this area all concurred on one point: visits to the requested State contributed to speed and relevance in executing requests, particularly where searching or interviewing a witness was involved. Even if it had no right to take action on the territory visited, the authority could have questions put on the basis of its knowledge of the dossier; it could react since it was on the spot; it returned home with a copy of evidence or statements the originals of which would take the official, and inevitably longer, route.

**Recommendation 17:** The Council calls on Member States to formulate a genuine forward-looking policy on mutual assistance, which could include a policy to facilitate visits abroad by police and judicial authorities concerning mutual assistance, and accordingly to provide the administrative departments and judicial authorities responsible for these matters with the premises, means and resources they need.

(t) *Training*

All the evaluations highlighted a pronounced need for initial and further training directly geared to the fact that the subject matter of mutual assistance was developing over time. The three main requirements were training to communicate through fluency in language, training in applicable international and national instruments and training in the judicial systems of other Member States.

Direct communication between judicial authorities often involves adequate mastery of one or more languages in addition to one's mother tongue; otherwise this provision in the 1990 Schengen Convention and the 2000 Convention remains purely theoretical. The inability to express oneself in a language other than one's own is a major obstacle to flexible and speedy mutual assistance.

The evaluations showed that several conventions and other international regulatory instruments as well as a variety of national instruments could be applicable when executing or applying for mutual legal assistance. It is therefore essential for Member States to speed up and lay greater emphasis on basic and specialist training for magistrates in order to put them in a position to practice mutual assistance in accordance with the international and national instruments in force. Otherwise, the international instruments negotiated and the new laws adopted by the Member States will remain largely a dead letter.

The vital training should supplement the role which the European Judicial Network contact points must play in this connection in providing information for the judicial authorities which request it regarding the most relevant instruments for obtaining the measures sought in the requested State.

Knowledge of other Member States' legal and institutional systems also appeared to be necessary to understand the requirements of the various systems. Two advantages would ensue making pointless requests, which would be doomed to failure, could be avoided and obstacles could be circumvented through suitable, targeted presentation of requests.

**Recommendation 18:** The Council calls on Member States to:

- promote and extend, from recruitment and during the course of careers, initial and further training for the purpose of at very least acquiring and maintaining and subsequently improving knowledge and fluency in at least one language in addition to the mother tongue. This requirement could apply to the police, judicial and administrative authorities operating in the field of mutual assistance,
- accelerate, amplify and update the initial and continuous training for prosecutors and judges in order to ensure that judicial authorities have the necessary minimum skills to practice active and passive mutual assistance. Specialist training should be encouraged for the prosecutors and judges most involved in these issues,
- encourage and promote initial and further training to impart and improve knowledge of the legal, judicial and institutional systems of the other Member States. The initiatives taken by certain Member States in this area and also in the framework of the Eurojustice conferences should be supported and the initiative by France regarding a European Judicial Training Network could, when adopted, contribute to furthering this process.

*(u) Specialisation*

In a number of the Member States visited and evaluated the experts' attention was attracted by the existence of specific institutions designed to improve mutual assistance, coordination of the judicial action taken by the different prosecutors responsible for a particular case and, where appropriate, coordination with foreign judicial authorities: national magistrate, national prosecutor, liaison magistrate, national anti-Mafia directorate, for example, while the European Judicial Network plays a similar role in certain Member States. All these institutions and, it is expected, Eurojust when set up, constitute *de facto* specialisation by a limited number of magistrates in international cooperation matters. Such specialisation presents numerous advantages in terms of efficiency and restricting training to a select circle of officials.

**Recommendation 19:** The Council calls on the Member States to examine the possibility of having judicial and administrative staff specialising in the management of mutual assistance in criminal matters. In that context should be examined the possibility of having a specific Union financing programme under Title VI to meet these needs. Such a programme could for instance address training in mutual legal assistance.

## IV. THE REPORTS

The practical information contained in the fifteen reports drawn up by the experts constitutes an incomparable fund of data on the institutional, judicial and legal systems of the Member States. It would be a pity if the Union and the Member States were not to benefit from this body of theoretical and practical information, which could be made available to the central authorities, courts, prosecutors and police in the Member States, the European Judicial Network, Eurojust (provisional, subsequently definitive, Unit), the European Police Office (Europol), the European Anti-Fraud Office (OLAF), the International Criminal Police Organisation — Interpol, to facilitate the day-to-day execution of their criminal mutual assistance, cooperation and coordination tasks.

**Recommendation 20:** The Council calls on the General Secretariat of the Council of the European Union and the European Judicial Network to make the information contained in the evaluation reports available in electronic form (e.g. CD-ROM or the website of the European Judicial Network).

## V. FOLLOW-UP TO EVALUATIONS

When drawing up each of the fifteen reports, the experts addressed precise recommendations to the Member States inviting them to correct, alter or amend particular aspects of their mutual assistance systems.

The value of the peer evaluation system lies largely in the process itself and in the incentive it provides to take comments into account. With this in mind, the follow-up to evaluations should be envisaged as a request to the authorities of the Member State concerned to describe either the action taken since the evaluation to remedy the problems pinpointed by the experts, or the reasons for their inaction.

As the evaluations proceeded, the experts were moved to comment that Member States were taking steps to amend their mutual assistance system, to change the law or actually to draw up more detailed legislation, to make up for structural backwardness, etc. Major efforts have sometimes been made to catch up. It would be useful to maintain this momentum. The follow-up to evaluations might serve this purpose.

**Recommendation 21:** The Council asks the Presidency to prepare a letter on the basis of the conclusions of the evaluation report on each Member State and to forward it to the Member States according to a timetable reflecting the original order of evaluations; each State would then have to describe the institutional, legal, practical, administrative and logistical measures it had taken or will take in response to the recommendations addressed to it. The outcome could then be passed on to the Council by means of a Presidency report.

## VI. EXTENSION OF EVALUATIONS TO CANDIDATE COUNTRIES

The Joint Action of 5 December 1997, which served as a legal basis for the evaluations has now become part of the Union *acquis*. However, the candidate States for accession have not yet benefited from it.

In view of the volume and the relevance of the information, both legal and practical, collected on international mutual assistance during the first evaluation exercise and in the light of the provisions of the Pre-accession Pact as set out in the text approved by the Council on 28 May 1998 <sup>(1)</sup>, it would seem useful to extend this procedure now to the candidate countries. It will be an easy matter to take this step now owing to experience accumulated. Moreover, it should be stressed that at its meeting on 24 May 2000 the Multi-disciplinary Group, sitting as the expert group on the Pre-accession Pact, referred to this possibility of extending the Joint Action of 5 December 1997. However, no decision has

<sup>(1)</sup> Pre-accession Pact on organised crime between the Member States of the European Union and the applicant countries of central and eastern Europe and Cyprus. (OJ C 220, 15.7.1998, p. 1).

been formally adopted. In any event, it will be essential first of all to evaluate the cost of extending this procedure which would necessarily have to draw on the resources of the Council General Secretariat, supported by national experts.

**Recommendation 22:** The Council calls upon the relevant Working Party to extend the mechanism for evaluating international mutual assistance to the candidate States for accession.

#### VII. THE EVALUATION MECHANISM

Article 10 of the Joint Action of 5 December 1997, which is the basis for the evaluations, calls upon the Council to examine the detailed rules and scope of the mechanism and, if appropriate, make adjustments to the Joint Action.

Throughout this first evaluation exercise, the mechanism in place has given full satisfaction. Its provisions have not created any particular difficulties and the procedure has been without a hitch. Discussion took place in the Multi-disciplinary Group at the time of the first intermediate report to resolve ambiguities of interpretation on a few points of detail. The procedure is now well-honed and the second exercise on enforcement agencies and the fight against drugs is now in progress and is proving satisfactory. Moreover, the Multi-disciplinary Group has already decided to devote the third

evaluation exercise to extradition and begin work before 1 July 2001 <sup>(1)</sup>.

It may also be noted that, although the confidential nature of the procedure slowed down the translation, it was not an insurmountable obstacle and was an important factor in inspiring confidence in the Member States; after discussion, they all agreed to remove the confidentiality requirement. A 'restricted' procedure, rather than a confidential procedure, is being used in relation to the second round of the evaluations. This simplifies administrative treatment of evaluations without losing the confidence, which the evaluation mechanism inspires.

#### VIII. CONCLUSION

In conclusion, while the evaluation procedure is certainly a constraint and demanding on resources, which the Member States sometimes find difficult, its critical aspect is very useful, given that it is in the hands of peers, and indeed to some extent irreplaceable. The first exercise has demonstrated that this tool works well.

On the basis of a report from the Presidency before the end of 2003, the Council should take note of progress made following implementation of the recommendations set out in this report.

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<sup>(1)</sup> Recommendation 28 in the document on 'The prevention and control of organised crime: a European Union strategy for the beginning of the new millennium' (OJ C 124, 3.5.2000, p. 1).