Towards a New Definition of Organised Crime in the European Union

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During the last fifteen years, the need to control organised crime has been used to justify and explain a wide range of European Union legislative measures, in the field of police and judicial cooperation, which have a considerable impact on the content of human rights. Given that “organised crime” has yet to be defined in an unambiguous way, these measures are liable to apply to types of conduct of considerably lesser gravity, bearing no relation whatsoever to organised criminal activity. Such practice negates fundamental rule-of-law principles, and ultimately tends to undermine any effort to harmonise the criminal law of EU member states in this field.

In view of these observations, the aim of this essay is to contribute in developing a new definition of organised crime within the framework of the European Union. Accordingly, the first section (I) focuses on the special measures, adopted in the fields of police and judicial cooperation, demonstrating their impact on the restriction of human rights. The following section (II) refers to the elements of criminal conduct that are used to justify these measures in practically all European instruments adopted for combating organised crime. These elements are then applied to assess the efficacy of the European instruments themselves. In other words, what is surveyed in section III is whether the onerous measures do actually apply to criminal acts bearing the defining attributes of organised crime as laid out in the aforementioned European instruments. The next section (IV), refers to the efforts made by member states, legislators and judges in order to accurately define organised crime. Finally, in the closing section (V) of this essay, a proposal of a new definition of organized crime is formulated, taking into account the
fundamental rule-of-law principles and the real need to harmonise the member states’ legislations in this field.

**The EU Initiatives for Combating Organised Crime: Expansion of Suppression and Restriction of Civil Liberties**

Ever since the early 1990s, the European Union has adopted a series of initiatives to combat organised crime. The declared goal of all pertinent legislative measures is the “enforcement of police and judicial cooperation” amongst member states in this field. However, far from merely furthering cooperation, the bulk of the adopted measures essentially bring about the expansion of suppression and the restriction of civil liberties.

**The Enforcement of Police Cooperation**

In the field of the so-called police cooperation, the foundation of Europol in 1995 – which was meant “to improve … the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime”¹ – did not merely result in the establishment of an organ that is competent for facilitating information exchange or assisting investigations. Police control has been extended to a level which has rightly been characterised as “proactive”,² since it is provided that data to be inputted in the Europol information system do not only pertain to those suspected of having committed a given crime, but also to those suspected of committing a crime in the future, or even those who merely get in touch with such suspects,³ i.e. persons who are aloof of any concrete criminal act. Consequently, the informative self-determination of an indefinite number of citizens is violated,⁴ in

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¹ See Preamble and article 2.1 of the Europol Convention (OJ C 316 of 27.11.1995, pp. 2–32).
³ See article 3 of the Europol Convention.