



Continuation of criminal activity in detention

Introduction

Organised crime is a global problem. Wealthy, ruthless criminals believe they are untouchable, and they are not afraid to use extreme violence to achieve their aims. They know that they face the prospect of long prison sentences, but they have the power and resources to often evade punishment or undertake mitigating measures to be able to proceed their criminal business while being incarcerated. The idea that criminals once detained retire from their criminal activities is unfortunately an illusion. As mentioned by the European Commission in the roadmap to fight drug trafficking and organised crime: the drugs trade orchestrated by organised crime is one of the most serious security threats facing Europe today, and the situation is escalating.¹ We need all hands on deck to tackle this threat and protect our societies. This requires covering all areas of criminal activity, including in prisons.

High-risk detainees continue criminal activities in detention

Efforts to dismantle criminal networks potentially leads to a higher number of high-risk detainees who, due to the power and resources they possess, as well as the criminal networks they are part of, are capable of continuing their criminal activities, businesses and ordering violence within and outside detention. Judges, prosecutors, lawyers, journalists, heads of state have been or are currently threatened or killed, which undermines the entire democratic legal order. Moreover, these high-risk detainees may be more of a flight risk than others. It poses a new challenge for the judiciary and the prison system to prevent such detainees from continuing criminal activities while being incarcerated and abusing the freedoms provided by the penitentiary legal framework during their legal proceedings and detention. Even when these high-risk detainees, often in charge of large criminal networks, are placed in maximum security, they find ways to continue their criminal activity internationally. This is done by abusing their basic rights, such as the right to communicate with family and with lawyers. Therefore, in the fight against criminal organisations a broad discussion is needed to develop a common approach to address this group of criminals without prejudice to the existing competence of Member States regarding the execution of sentences.

Wealth of information available in detention

In the meantime, efforts should be made to use information from prisons to tackle these ruthless criminal networks. Currently, information obtained within detention is primarily used to assess the internal security of the prison. Insufficient consideration is given to the high-risk category of detainees and the information that can be extracted during their detention and shared with law enforcement in view of tackling criminal networks, activities and finances. This information can be an important piece of the intelligence picture in view of dismantling criminal organisations. An example is identifying patterns when comparing lists of visitors of different prisons. This can show whether certain people visit detainees from the same network in different penitentiaries to in fact act as a messenger to facilitate criminal activities. Another example is tracking locations of phone calls to and from detainees. This may provide information in which (other) EU Member State(s) or third countries a criminal network is active. The same goes if a detainee suddenly wishes the services of a foreign lawyer when there are no criminal proceedings in that country of the foreign lawyer pending against this detainee. There are several more examples of information in prisons that could be vital to fight organised crime effectively and disrupt activities of high-risk criminal networks. This information resource has enormous potential in the fight against criminal organisations.

Prison services are partners in the fight to organised crime

Detention is the final stage of a criminal procedure but knowing that criminal activities persist during the incarceration of high-risk detainees, it is vital to include intelligence and insights during the detention phase in investigations and criminal procedures. A continued interaction between investigators, prosecutors and prison services is required. Therefore, this non-paper is also a call to recognize prison services as full-fledged partners and to include them fully in the fight against organised crime.

EMPACT as a possible instrument

In light of the described situation it is time for an EU approach to exchange information available in prisons with law enforcement and other relevant stakeholders. This could benefit specific cases which are being investigated, but it may also support analyses into criminal patterns, trends and modus operandi. EMPACT

¹ COM(2023) 641



could be a possible instrument for exchanging this information. The possibilities and ways to overcome potential obstacles in attaining this purpose must be further explored jointly.

Moreover EMPACT could also be a stepping stone in preparing a broader discussion within the EU on how to effectively tackle criminal activities, businesses and violence within and outside prisons ordained by high-risk detainees in view of maintaining or initiating criminal networks.