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### Commission on Crime Prevention and Criminal Justice

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#### Draft report

*Rapporteur:* Zohra **Zerara** (Algeria)

#### Addendum

#### Thematic discussion on economic fraud and identity-related crime

1. At its 3rd and 4th meetings, on 17 April, the Commission considered agenda item 3 (a), entitled “Thematic discussion: ‘Economic fraud and identity-related crime’”. The discussion was guided by the following subthemes:

(a) Defining and criminalizing economic fraud and identity-related crime in civil and common law systems, taking into account the criteria of the United Nations Convention against Transnational Organized Crime;

(b) Criminal justice responses: investigation, prosecution and international cooperation;

(c) Prevention and cooperation with the private sector, covering cooperation both in preventing and in investigating and prosecuting economic fraud and identity-related crime; and technical assistance in addressing economic fraud and identity-related crime;

(d) International cooperation in the prevention of economic fraud and identity-related crime, particularly awareness-raising and technical assistance (directed especially at decision makers and relevant officials).

2. For its consideration of item 3 (a), the Commission had before it the following:



(a) Report of the Secretary-General on international cooperation in the prevention, investigation, prosecution and punishment of economic fraud and identity-related crime (E/CN.15/2009/2 and Corr.1);

(b) Note by the Secretariat on economic fraud and identity-related crime; and penal reform and the reduction of prison overcrowding, including the provision of legal aid in criminal justice systems (E/CN.15/2009/15);

(c) Conference room paper on essential elements of criminal laws to address identity-related crime (E/CN.15/2009/CRP.9);

(d) Report on the meeting of the core group of experts on identity-related crime, held in Courmayeur, Italy, on 29 and 30 November 2007 (E/CN.15/2009/CRP.10);

(e) Report on the second meeting of the core group of experts on identity-related crime, held in Vienna on 2 and 3 June 2008 (E/CN.15/2009/CRP.11);

(f) Report on the third meeting of the core group of experts on identity-related crime, held in Vienna from 20 to 22 January 2009 (E/CN.15/2009/CRP.12);

(g) Conference room paper on legal approaches to criminalize identity theft (E/CN.15/2009/CRP.13);

(h) Conference room paper on identity-related crime victim issues: a discussion paper (E/CN.15/2009/CRP.14).

3. The thematic discussion on item 3 (a) was chaired by the First Vice-Chairman and led by the panellists: Christopher Ram (Canada), Sergio Staro (Italy), Fausto Zuccarelli (Italy), Seehanat Prayoonrat (Thailand), David Kirk (United Kingdom) and Jonathan Rusch (United States); and independent experts Marco Gercke, Laurent Masson and Martin Muirhead.

4. The Commission heard statements by the observer for the Plurinational State of Bolivia (on behalf of the Group of Latin American and Caribbean States) and the representatives of Japan, Algeria, Austria, Argentina, Indonesia, Canada, Jamaica, India, the Russian Federation, Saudi Arabia, the Islamic Republic of Iran, Algeria, the United States and the Democratic Republic of the Congo. Statements were also made by the observers for Switzerland, Sweden, Kuwait, Chile, France, Morocco, Egypt and Mexico. A statement was also made by the observer for the League of Arab States.

## **A. Deliberations**

5. The Chairman, referring to the background work and initiatives of UNODC in the area of countering economic fraud and identity-related crime, noted that the thematic discussion offered a platform for exchanging views and experiences on how to develop strategies and promote practical action against such crime.

6. The Executive Director of UNODC referred to the threats posed by economic fraud. He noted that the current global financial crisis provided new opportunities for organized criminal groups to emerge as one of the few sources of credit. He stressed the need to reinforce the work of financial intelligence units and use the United Nations Convention against Transnational Organized Crime and the

United Nations Convention against Corruption as blueprints for fighting fraud and rebuilding trust in the financial system. He noted the significant overlapping of economic fraud and identity-related crime and the fact that increased reliance on personal and corporate identification in a wide range of transactions had made society extremely vulnerable to the misuse of identity and other related fraudulent practices. He stressed that the growing size, complexity and connected risks of identity-related crime required effective and efficient counteraction in areas such as prevention, protection of victims and prosecution, as well as concerted efforts to promote international cooperation in criminal matters and areas of synergy involving the public sector and the private sector.

7. The Rapporteur of the Intergovernmental Expert Group to Prepare a Study on Fraud and the Criminal Misuse and Falsification of Identity noted that the Intergovernmental Expert Group was an open-ended body mandated to develop a methodology for the study and elaborate its content, as well as to develop useful practices, guidelines or other materials in the prevention, investigation and prosecution of fraud and the criminal misuse and falsification of identity. The core group of experts on identity-related crime, established by UNODC in consultation with the United Nations Commission on International Trade Law, included Government officials, representatives of the private sector, representatives of international and regional organizations and members of academia, who developed strategies, facilitated further research and agreed on practical action against identity-related crime.

8. The first panellist outlined the gradual shift in means of establishing and using identity from face-to-face recognition and paper documents to automated, more remote technologies. He noted that many possible constituent elements of offences, such as the concept of “identity information”, were difficult to define or were subject to variations and divergent approaches among States. Four phases of identity-related crime were presented: preparatory acts; the obtaining of identity information; the transfer of such information; and the use of such information to commit further offences. The panellist emphasized the increasingly transnational nature of identity-related crime and related fraudulent acts and stressed the need for enhanced international cooperation in that area.

9. The second panellist referred to the Group of Eight Lyon-Roma Anti-Crime and Terrorism Group, in particular the work of its Criminal and Legal Affairs Subgroup on developing essential elements of criminal legislation to curb identity-related crime. It was noted that the “life cycle” of identity-related crime represented a chain of events culminating either in harm to persons whose identities had been misused or who had been victims of other offences linked to identity abuses or in damages to commercial and economic interests. As a result, the Group had developed a typology chart reflecting a variety of approaches that might be taken to address the types of activities associated with identity-related crime.

10. The third panellist made a presentation on legislative and institutional responses to economic fraud and identity-related crime in the United Kingdom. He noted that new national legislation against economic fraud had been introduced in 2007, and that specific provisions criminalizing the use of a false or falsified identity document for the purpose of establishing a false identity had also been put in place. He also noted that a major programme had been launched in 2005 to review the adequacy of investigation and prosecution of fraud and that the

programme involved Government agencies and prosecution authorities, as well as private sector entities in the banking, insurance and retail sectors. The panellist referred to the potential of, and the challenges encountered in, the cooperation between the public and private sectors to address identity-related crime and the problems associated with such crime.

11. The fourth panellist outlined a number of emerging challenges and demands in the areas of investigation and prosecution of economic fraud and identity-related crime. He pointed out that the rapidly growing number of cases of identity-related crime with transnational aspects made it essential for effective international cooperation to be used to combat such crime. A first step towards enhancing such cooperation was the adoption, to the greatest extent possible, of common approaches to criminalization that could provide a basis for mutual legal assistance and extradition. The rapid sharing of information among law enforcement authorities was necessary to ensure such cooperation in real time. He proposed that international legal instruments, such as the United Nations Organized Crime Convention, the Convention against Corruption, the international counter-terrorism instruments and, where applicable, the Council of Europe Convention on Cybercrime, be used more extensively to foster such cooperation. He provided information on the main investigative tools used in cases involving electronic evidence, such as the search and seizure of stored data, the interception of communications, the expedited preservation of stored computer data and the use of the Group of Eight “24/7” network of contact points (available 24 hours a day, seven days a week).

12. The fifth panellist presented a national case study in which the criminal activities under investigation included both the illegal obtaining of identity information and fraud. He stressed the need for law enforcement authorities and financial intelligence units to coordinate at the national and international levels with a view to ensuring more effective prevention and suppression of such offences. The panellist recommended that the criminalization of economic fraud and identity-related crime be in conformity with the requirements set forth in the Organized Crime Convention.

13. The sixth panellist informed the Commission about the experiences of Italy in the area of critical information infrastructure protection and the action undertaken in that country to tackle digital identity theft. He made reference to measures geared towards enhancing national and international law enforcement responses to such crime, including online reporting platforms, the training of personnel, undercover operations and the sharing of information using international police networks. He stressed the significance of cooperation among relevant public and private sector entities, especially in the area of prevention.

14. The seventh panellist shed light on the role of the private sector in assisting victims of online identity theft and fraud and outlined the global approach adopted by a leading information technology company to tackling such crime, including its efforts in the following areas: the education of users; the development of technology to protect them; cooperation with law enforcement authorities; and the provision of training in high-level forensics for law enforcement authorities and the industry. He referred to a number of initiatives aimed at enhancing cooperation between public and private sector entities to address related challenges, including an initiative undertaken jointly with the European Commission and academia to provide

computer forensics curricula to law enforcement authorities and the industry; the National Cyber-Forensics and Training Alliance involving law enforcement in the public sector and the private sector in the United States; the Council of Europe guidelines for the cooperation between law enforcement and Internet service providers against cybercrime; and the Digital PhishNet, an initiative involving public and private sector cooperation aimed at facilitating efforts to counter “phishing” attacks. The panellist also made reference to the Advance Fee Fraud Coalition, a private sector initiative to fight online fraud and protect victims of such fraud.

15. The eighth panellist shared insight on fraud management, detection, intelligence and security issues at a major global provider of financial services, based in London. He underlined the importance of establishing specialized units in banks for the prevention and detection of fraud, as well as the importance of training, education and the existence of single contact points for consumer protection.

16. Several speakers noted the broadness and complexity of economic fraud and identity-related crime, and provided information on national action, as well as criminal law provisions, to address such crime and the criminal offences associated with it, including corruption, money-laundering and cybercrime.

17. It was noted that although legislative measures to curb a variety of offences involving criminal fraud, including computer-related forms of such fraud, had been adopted in many countries, such measures might need to be adjusted in order to deal effectively with new and sophisticated types of domestic or transnational fraud.

18. It was pointed out that, in the case of identity-related crime, a number of Governments had already criminalized various acts involving the misuse of identity and others were in the process of considering or establishing as criminal offences new forms of identity-based crime, whereas some Governments were still not convinced that a new perspective on criminalization would be a significant improvement over the existing situation, in which only acts such as forgery, fraud and impersonation were considered criminal offences. It was noted that the concept of identity-related crime was a novel one and that it required further attention and consideration. Several speakers commented on the work of the core group of experts on identity-related crime and the Group of Eight Lyon-Roma Anti-Crime and Terrorism Group, which was based on the development of typologies and the identification of constituent elements of conduct associated with identity-related crime that might need to be addressed by national criminal law.

19. It was noted that common or converging approaches to criminalization issues would fulfil the requirement of dual criminality and thus facilitate international cooperation in criminal matters. Speakers advocated the use of the Organized Crime Convention and the Convention against Corruption to that effect, and several speakers stressed the usefulness of the Convention on Cybercrime. The use of international police networks and databases, such as those of INTERPOL and the European Police Office (Europol), to ensure the effectiveness of law enforcement cooperation in real time was recommended.

20. Speakers emphasized the need to provide sufficient protection and support to victims of economic fraud and identity-related crime, especially since victimization of those persons might continue over a longer period of time. One speaker proposed

the adoption and implementation of asset-sharing schemes to enable victims to be compensated and any related damage to be redressed by returning confiscated proceeds.

21. Speakers drew attention to the need for adopting and implementing comprehensive approaches that would encompass both reactive and preventive measures against economic fraud and identity-related crime. In the area of prevention, it was emphasized that further efforts should be made to alert target groups, to warn and educate potential victims and to disseminate information on the risks associated with such forms of crime. The role of technology in preventing economic fraud and identity-related crime was also considered. Many participants recognized the importance of technological security measures in protecting customers from fraudulent practices and safeguarding the integrity of identification documents and the supporting information systems.

22. Several speakers noted the need for and potential of expanding private and public sector cooperation, which was seen as critical to gathering and assessing data, ensuring effective crime prevention and investigating and prosecuting cases involving economic fraud and identity-related crime.

23. Speakers expressed support for providing technical assistance to States lacking the necessary capacity to deal effectively with economic fraud and identity-related crime, including the provision of legal advisory services. One speaker made reference to an initiative undertaken in Arabic-speaking countries to develop model legislative provisions on countering cybercrime. Several speakers stressed the importance of training investigators and prosecutors in dealing with the diverse forms of economic fraud and identity-related crime and in applying new investigative methods.

24. One speaker provided information on lessons learned from the implementation of a project on tackling investment fraud, including the need for national and international coordination; the need for upgrading the skills and expertise of investigators and prosecutors dealing with that type of fraud; and the importance of having in place a toolbox containing new working methods and summaries of investigative techniques, as well as a comprehensive action plan for investigation.

25. At the end of the thematic discussion, the Chairperson summarized the salient points as follows:

(a) Bearing in mind that new forms of economic fraud and identity-related crime had emerged as a result of the spread of modern information and communications technologies, there was a need for new strategies and proper counteraction to tackle such crime;

(b) It was essential to develop precise and detailed definitions and typologies to identify the forms of economic fraud and identity-related crime with a view to covering the widest possible range of acts involved, especially acts committed within the “life cycle” of identity-related crime;

(c) The links between economic fraud and identity-related crime and other forms of crime, such as transnational organized crime, corruption, cybercrime and money-laundering, were highlighted. It was emphasized that there was a need to enact or update national laws to reflect those links and provide for adequate legislative responses, as appropriate;

(d) National authorities needed to consider reviewing or updating national laws in order to respond to the recent evolution of economic fraud and the use of modern technologies to commit it. It was acknowledged that, as the international problem of identity-related crime continued to grow, Governments must continue to review and, where appropriate, update their laws or enact new laws, in order to ensure that those laws provide sufficient scope of coverage and appropriate criminal sanctions;

(e) It was highlighted that there was a need to adopt and implement measures, such as the establishment of flexible jurisdictional bases, the extension of statutes of limitations and the use of new investigative methods and techniques;

(f) There was general agreement that strengthening international cooperation mechanisms and fostering new mechanisms, including for the exchange of information in real time, were important. Furthermore, at the normative level, existing international legal instruments, including the Organized Crime Convention, the Convention against Corruption and, where applicable, the Convention on Cybercrime, provided a sufficient legal basis for international cooperation, and the focus of attention should be on efforts to promote the effective implementation of the provisions of those legal instruments;

(g) Emphasis was placed on the protection of victims of economic fraud and identity-related crime. It was also stressed that priority should be given to promoting awareness-raising and educational programmes, establishing robust and efficient systems and processes of handling complaints and redressing, to the extent feasible, damage suffered, as well as to improving coordination among competent national authorities involved in victim issues;

(h) A range of efforts were needed to ensure that appropriate measures were in place to prevent economic fraud and identity-related crime. In that connection, education and the dissemination of information about such crime to potential victims were considered critical elements of prevention strategies. One major area identified in the discussion was that of “technical prevention” measures, aimed at making information and other technologies more difficult for criminals to exploit and more protective of sensitive information;

(i) It was acknowledged that cooperation between the public and private sectors was essential to the development of an accurate and complete picture of the problems posed by economic fraud and identity-related crime, as well as to the adoption and implementation of both preventive and reactive measures to deal with those problems. Cooperation in the areas of investigation and prosecution should take into account the need for appropriate safeguards to ensure the independence of the investigative, prosecutorial and judicial functions;

(j) Priority should be given to the provision of technical assistance for building or upgrading the capacity of national authorities to address issues related to economic fraud and identity-related crime, especially in developing countries, countries with economies in transition or countries rebuilding after conflict or natural disaster. Emphasis was placed on the need for technical assistance, the importance of training and the need for developing and keeping up to date training material for criminal justice and law enforcement officers, as well as persons in a position to identify and report such crime.