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On Joint Investigation Teams, Europol and Supervision of Their Joint Actions[2]

1. INTRODUCTION

Two particular forms of international police cooperation – the activities of joint investigation teams, and the participation of Europol in those activities – occupy a central place in this paper. Developments in relation to joint teams currently act as a sort of centrifuge of international investigation. There is no doubt that cooperation reveals what still remains to be done. Through the joint police teams, the legal systems of the participating countries will be confronted with their own differences. The communality trumpeted in this cooperation suggests an organisational and normative communality which as yet does not exist. It is true that the new European Union convention on mutual legal assistance has created an important legal framework which also helps to further cooperation in the field of criminal law in the operational field, but this is by no means an answer to all the problems which exist.

The rivalry between the various legal systems may seriously hamper the effectiveness of European police cooperation in practice. This is why it is vitally important that controversial points which arise in the course of joint investigations are removed, as far as is possible. This means above all that further research is necessary into the practical problems in the organisation of joint investigation, into the normative (police and prosecution) principles which can be applied in joint operations and into the way in which supervision – both democratic and judicial – of these operations is organised.

Such research entails two aspects: one in terms of content (can common standards of investigation be found?) and an institutional aspect (how can practical problems in the organisation of cooperation be solved, and how should supervision of this cooperation be constructed?). Before these two aspects are dealt with, there first follows

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2. This article is a modified version of a written paper presented at the conference on Europol, organised by the Netherlands Parliament held on 7 and 8 June 2001, in The Hague and specially intended for members of the European Parliament.

European Journal of Crime, Criminal Law and Criminal Justice, Vol. 10/1, 70–82, 2002.
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a description of the character of joint investigation teams and the position of Europol in the participation of these teams. The conclusion is that the development of a procedural common denominator (cooperation on the basis of uniform principles for the purposes of investigation) has institutional consequences that will barely be affected by the pillarised structure of the European Union.

2. JOINT INVESTIGATION TEAMS

After the Plan of Action for combating organised crime[3] had prompted the setting up of 'joint teams', general rules were incorporated into the Treaty of Amsterdam (1997) which constitute the basis for joint operations in joint investigation teams in which police, customs and other specialised services of the member states involved may participate (Article 30 Treaty on European Union). The vigorous fight against crime – initially trans-national organised crime, in particular relating to terrorism, trafficking in drugs and people – was above all, placed within the perspective of the creation of a 'place of freedom, security and justice' within the European Union.[4]

The new European Union convention on mutual legal assistance[5] further elaborates the legal basis for joint police cooperation.[6] The intention of the treaty is to provide a specific framework for setting up and putting in place joint investigation teams. Article 13 enshrines the necessary conditions for this.

Firstly, there should be an agreement between the competent authorities of the member states concerned (the number of which is not restricted). For the functioning of the team, however, certain limitations do apply: the team is set up for a specific aim (in which field of criminal activity and in which country?) and is set up for a specific duration (which moreover may be extended by mutual agreement). A variety of people may participate in the team: generally investigating officers, but also judges and members of the public prosecution service; also, people who do not represent their authorities but who are attached to other EU institutions (Europol, OLAF, Eurojust), even people who originate from countries outside the European Union or who belong to other international organisations (for example, Interpol).

The team is stationed in the place where it has been set up. This will be the country where, it is anticipated, the greater part of the investigation will be carried out. The team is led by an official who comes from the country where the team is stationed. If the team is active in more than one member country, the leadership of the team may alternate. The team is required to respect the law of the country where it is operating.

The seconded members (that is to say members who are operating outside their

3. Decree of the Council d.d. 28 April 1997, Pb. 1997, C 251/01.
4. Outside the EU level the necessary experience with joint operations has already been acquired, particularly in the various regions (see F.J.L.M. Claus and M.G. Faure, *Juridische beletselen voor politiële beleidssamenwerking tussen Nederland en België* (Maastricht 1995)). The EU investigation teams will doubtlessly be able to benefit from these experiences.
5. Convention on Mutual Assistance in Criminal Matters (2000).
6. Pb 2000, C 197. The explanation of the treaty is published in Pb. 2000, C 379/17.

own country) may be present at investigative activities in another country, unless the team leader deems this to be undesirable for particular (operational) reasons. However, seconded members can – on the instruction of the team leader and after approval of the seconded country and the seconding country – be charged with carrying out investigative activities in the other country.

The permission required for this – which may be general in nature or may be limited to specific cases – may be set forth in the setting up agreement or may be given at a later date. What is exceptional, and of great importance in practice, is the clause that the seconded member is authorised – partly on the basis of intelligence that is available in his country – to request his/her own national authorities to perform acts which are deemed necessary by the team. In that case, the country where the team is active does not have to make a separate request for legal assistance. If, in general, legal assistance is necessary from a country that was not involved in setting up the team or from a country outside the European Union, the request for legal assistance is made by the country in which the team is acting.

Finally, the European Union convention on mutual legal assistance regulates the conditions under which data which has been acquired by a member or a seconded member in a lawful way may be used, if this intelligence were not otherwise available to the competent authorities of the member states concerned. The explanation of the treaty expresses the desirability that the member states should consult with one another in situations where witness statements are used for a purpose other than that for which the team was set up, and that permission should be asked of these witnesses in such a case.

3. CONTRIBUTION OF EUROPOL TO JOINT INVESTIGATION TEAMS

From the moment that regular police cooperation[7] in terms of joint investigation teams was discussed at EU level, the intention was for Europol to play a prominent role in the process. Thus the 1997 Plan of Action[8] clearly set out Europol's contribution. In this plan, the Council argued that Europol should acquire 'functional' powers to work together with national authorities. With this cooperation in mind, Europol must, according to the political argument, be able to provide facilities and support to the preparation, coordination and execution of specific investigations by the authorised services of the member states, including operational activities by joint teams which include representatives of Europol in a supporting capacity. Furthermore, Europol must be able to request the authorised services of the member states to investigate in specific cases and to develop specific expertise for the benefit of investigation into organised crime (guideline 10).

The mandate described here is expressly set forth in the Treaty of Amsterdam. In accordance with this treaty, Europol should be enabled 'to facilitate and support

7. In the field of customs, cooperation between customs officials had been regulated earlier; cf. for example, the BASS Treaty of 1969, although a clear basis for joint teams has only recently been incorporated into the Naples II Treaty (1997).
8. Decree of the Council d.d. 28 April 1997, Pb. 1997, C 251/01.

preparation, and foster coordination and execution of specific investigation activities by the competent authorities of the member states, including operations by joint teams which include representatives of Europol in a supporting role' (Article 30 Treaty on European Union). In the subsequent Plan of Action drawn up in Vienna (1998[9]) in elaboration of the Treaty of Amsterdam, measures were announced to widen Europol's powers (to now also include counterfeiting, in connection with the introduction of the Euro[10]) and to concentrate its activities on operational cooperation, in this sense too – such as was already derived from the 1997 Plan of Action – that Europol may request the competent authorities of the member states to carry out an investigation into specific matters and that they – in a supporting capacity – may also act within the framework of operational actions by joint teams (recommendation 43).

In this connection it was decided that Europol's powers would not remain limited to the tasks as already set out in the Europol Treaty (1995[11]) which only pertained to the gathering, sharing and propagating of intelligence. Thus Europol – whose creation by the member states was initially greeted with a degree of mistrust – was delivered from its operational and institutional isolation.[12] Europol became more than an 'intelligence broker'.[13] Through later decisions of the Council, including that of Tampere (1999), the position of Europol in these joint teams was yet more strongly confirmed: it should be empowered not only to initiate investigations in the member states, but also to initiate the setting up of joint teams (recommendation 45).

Meanwhile the task force of European police chiefs created by the Tampere decision (recommendation 44) was busy implementing what the Council still considered a matter of high priority. A number of implementation decrees have already been produced. On 28 September 2000, the Council decreed that the member states should carefully study any request from Europol to initiate an investigation, that they should let Europol know what the results have been of any investigation which has been set up and that, if no investigation is underway, they should inform Europol, explaining why not.[14]

In its recommendation of 30 November 2000, the Council further considered the question of what Europol's contribution should entail in concrete terms (such as assistance in coordination and advice on technical questions and crime analysis).[15] This was an opportunity to further broaden Europol's field of investigation, in particular with respect to money laundering, regardless of the original offence.[16] The Treaty of Nice (2000) did not include any further provisions with respect to joint teams and Europol's contribution to them.

9. Decree of the Council d.d. 3 December 1998, Pb. 1999, C 19/01.
10. On the basis of the EU Framework Decree of 29 May 2000 (Pb. 2000, L 140) the legislation against counterfeiting was tightened up (see, summarised, for the Netherlands: *Nieuwsbrief Strafrecht* (2001)/6, pp. 192–194).
11. Pb. 1995, C 316/1.
12. C.J.C.E. Fijnaut, 'Europol en Eurojust', *Justitiële verkenningen* (2001)-2, pp. 11–24, at p. 13.
13. B. Swart, 'Politie en justitie in de Europees Unie', *Ars Aequi* (2001)-5, pp. 109–118, at p. 112.
14. Pb. 2000, C 298/8.
15. Pb. 2000, C 357.
16. Pb. 2000, C 358.

4. WHAT ARE 'OPERATIONAL' POWERS?

Various EU documents still speak about Europol's power to take part in 'operational' actions. But what does this actually mean? The Vienna Plan of Action (1998) contained a reminder that one of the most important priorities deriving from the Treaty of Amsterdam is to establish 'the nature and scope of Europol's operational powers' (recommendation 43). In terms of the consequences of this recommendation, first thought was given to the power to take the initiative in setting up an investigation or either to request member states or to act within the framework of operational actions by joint teams.

This last power in particular – participation in joint investigation teams – might give the impression that Europol's operational powers may also be interpreted in the executive sense, viz. that Europol should have independent (autonomous) competence, in carrying out operational (concrete) activities, to be able to apply prosecution or other police powers itself (such as taking investigation measures or exercising coercive measures in respect of persons). However, this is not the case. The fact the Europol can play an independent (supportive) role in operations does not yet mean that it can also have executive powers in reality.

The standpoint of the Dutch government, too, amounts to saying that the participation of Europol in joint teams – which moreover can only be settled via a change in the Europol Treaty – can only take place at the level of support and should not therefore be viewed in an executive sense.[17] Moreover, support is provided *in situ* by Europol officials under the supervision of the competent national authority.[18]

This point of view similarly has currency in Europol circles. This entails direct consequences for the supervision of Europol. Europol's director, Jürgen Storbeck, thus defended the view that there is only a place for judicial control in the European context if his service is able to independently instigate investigations.[19] Europol has not had the power so far – be it by approaching individuals, be it by applying means of coercion – to gather intelligence of its own accord. It does avail itself of public sources (such as the Internet) to supplement its own intelligence.

Even without an executive role accruing to Europol investigation teams in reality, its influence on setting up and launching these teams may be considerable. They can, after all, jump into the gap left by absent cooperation by taking initiatives and by launching investigations to which Europol – possibly at variance with national insights – attaches priority. This would seem to be all the more important when national police forces – who by nature tend to be protective of their intelligence[20] – are not over-

17. Annotated agenda of the session of the Council d.d. 17 October 2000, States General 2000–2001, 23 490 etc., nos. 6a and 166, p. 3. See also the explanatory memorandum to the Dutch Act Sanctioning the Europol Treaty: Europol is a facilitating unit, not an independent entity which institutes autonomous investigations with its own people, resources and support (Lower House 1996–1997, 25 339, no. 3, p. 4).
18. According to the Dutch Act Sanctioning the Treaty of Amsterdam, Lower House 1997–1998, 25 922 (R 1613), no. 3, p. 27.
19. Interview in Staatscourant (official gazette) on 5 July 2000, p. 2.
20. On problems at the level of information exchange, see also M. den Boer, 'Internationale politiesamenwerking', in C.J.C.E. Fijnaut, E.R. Muller en U. Rosenthasl, eds., *Police. Studies over haar werking en organisatie* (Alphen aan den Rijn 1999) pp. 577–617.

enthusiastic about accepting the services of Europol. The member states will not – at the political level – be easily able to ignore a request from Europol, especially if an earlier request has not been granted. On the basis of the Treaty of Amsterdam, it is even possible for the European Commission to request the member states to provide a justification.[21]

Europol can also exercise influence on the operational execution of a joint action. By combining and coordinating the knowledge, information, methodology and technology from various countries Europol can, certainly from its central intelligence position and its experience with reducing cultural differences, give direction to joint actions, for example, in the prior consultations about the composition of the team and the location where the team is to be stationed. This actual influence on the setting up of the investigation will be broadened yet further when Europol also contributes – already by making available organisational and human resource facilities – to the financing of team investigation.

Due to the – mainly in theory[22] – increasing influence of Europol on operational activities, it is important to intensify supervision, both judicial and democratic, of this European police force. The politicians could make a strong case for amending the Europol Treaty, so that the participation of Europol in operational and joint activities could be specified in greater detail. The difference – in the field of immunity – should also be stressed between members of a joint team (who will have to operate a certain level of openness in respect of the methods of investigation employed) and the participating Europol officials (who can shelter behind their obligation to secrecy[23]). This could seriously complicate judicial control in domestic criminal procedure.

Against this background, it would be desirable if within the European Union the rule were to apply, as it currently applies in the Netherlands, that the deployment of foreign investigation officials in the practice of special powers of investigation were made dependent on their willingness to make a witness statement later in the Dutch criminal process.[24] In any event, on that point ad hoc arrangements could be made in the agreement when a joint team is being set up, which would also bind the Europol officials.

At the political level, agreements could be made on the further content of the set-up agreement, for instance, on the method of intelligence gathering in the participating countries and the use of evidence gathered within the team.[25] In this connection, attention should also be paid to the question of what powers the team can exercise independently. It must be assumed that the intention is not to require a separate request for mutual legal assistance for the exercise of each power or for each juristic act. In

21. J. Koers, *Nederland als verzoekende staat bij de wederzijdse rechtshulp in strafzaken. Achtergronden, grenzen en mogelijkheden* (Nijmegen 2001) p. 226.
22. The influence of Europol should not be, yet again, overestimated. In practice it still requires plenty of effort to winkle out information from the member countries, even via the national Europol units. Sometimes Europol finds itself having to approach experts outside the units within the police forces.
23. See Articles 31 and 32 of the Europol Treaty, further elaborated in the protocol concerning the privileges and immunities of Europol (Pb. 1997, C 221)
24. Royal decree of 15 December 1999, Stb. 1999, 549.
25. Such arrangements, which at the official level are already prepared, determine the efficiency of a joint team (J. Koers, *op. cit.*, p. 428).

any event, each country will have to make its own regulations with respect to the procedural status of official acts performed by foreign officials in their own countries.[26]

5. COMMON STANDARDS FOR INVESTIGATION?

An important question in connection with the functioning of joint teams (and the supervision thereof) concerns the material content of the standards which govern them in the course of their criminal investigations. These standards can be partly found in international treaties of mutual legal assistance. For instance, the Schengen Agreement – since 1999, the entire Schengen *acquis* has been in force for virtually all EU countries by virtue of its incorporation into the treaty of Amsterdam – enshrines rules pertaining to the (voluntary) provision of intelligence by the police, (trans-national) observation and pursuit. The new European treaty on mutual legal assistance regulates some specific forms of trans-national powers: the interrogation of suspects, witnesses and experts (by video- or tele-conferencing; Articles 10 and 11), controlled delivery (Article 12), infiltration (Article 14) and intercepting telecommunications (Articles 17–21).

The current treaties on mutual legal assistance are an important step on the road to the harmonisation of international police powers, but they do not cover everything. This means that several matters – deals with criminals, for instance – remain unstandardised at the European level, such that police cooperation will still have to fall back on the domestic legal system, as long as important differences remain between the countries in the standards of special methods of investigation.[27]

Nonetheless, the European Convention on Human Rights (ECHR) – shortly to be supplemented by the new EU Charter of Fundamental Rights[28] – may also be of considerable importance for European cooperation in criminal investigation. This treaty may also adopt rules and principles – whether it be for the development of new standards, or whether it be for supplementing existing ones – which may further standardise international policing practice, for example, in respect of the application of means of coercion and methods of investigation,[29] but also in the phase which precedes a criminal investigation, the exploratory or proactive phase.[30] Although the ECHR, it is true, does not enshrine any general rules on the furnishing of proof in criminal cases – according to firm jurisprudence of the European Court of Human Rights, the admissibility of evidence and the appreciation of evidence remains within the competence of the national courts – this does not alter the fact that in the decisions of the Court

26. J. Koers, *op. cit.*, p. 373.
27. P.J.P. Tak, red, *Heimelijke opsporing in de Europees Unie* (Antwerpen-Groningen 2000) p. 815.
28. Promulgated at the European Summit in Nice on 7 December 2000 (Bull, EU 12-2000, p. 189). On the relation between this charter and the ECHR see B.E.P. Myjer, *Bij een vijftigste verjaardag*, inaugural lecture Vrije Universiteit Amsterdam (Nijmegen 2001).
29. C. Joubert and H. Bevers, '*Schengen Investigated, A Comparative Interpretation of the Schengen Provisions on International Police Cooperation in the Light of the European Convention on Human Rights*', dissertation Vrije Universiteit Amsterdam (Amsterdam 1996).
30. C.J.C.E. Fijnaut, *De normering van het informatieve onderzoek in constitutioneel perspectief*, preadvies voor de Nederlandse Vereniging voor Rechtsvergelijking (Deventer 1994).

in Strasbourg, practical indications are to be found which the furnishing of proof must satisfy, and which the police can anticipate in international investigations. Thus for instance, evidence may not be based solely on an anonymous witness.[31] This means that the police must seek supplementary evidentiary material. The police are also obliged to add disculpatory evidence to the dossier,[32] and the silence of the accused may under certain circumstances be used in evidence against him[33] – the police therefore need to know under what circumstances.

The ECHR is also important for the non-criminal phase of the investigation. Not everything from this phase may used for the purposes of the criminal process. If – by way of an admittedly not very realistic example – Europol, prior to a criminal suspicion, were to acquire incriminating information by means of observations or infiltration acting on their own authority in contravention of Article 8 ECHR, this may have consequences for the subsequent criminal proceedings. The ECHR is, once again, applicable to the use of evidence for use in a criminal case.[34] This does not yet mean that the national court's duty to investigate should extend as far as the outset of the investigation. The intelligence that is used abroad as the start of the criminal investigation does not have to be unravelled in every detail. Foreign investigation results may be used for the national criminal process, unless a credible case can be made that these results were obtained in contravention of the ECHR.[35]

Analysis of the ECHR and the conventions related to it pertaining to human rights can provide the practical, necessary evidence that will exercise a unifying effect, and may provide standards for development which do not yet currently belong to a commonly accepted system of standards.

6. JUDICIAL SUPERVISION

Police cooperation such as it has developed in international practice emphasises the importance of effective judicial cooperation. However, cooperation between the national judicial authorities was late getting off the ground, and it is still unclear in what direction it is going to develop. In the first instance, the provisions that were created in the field of justice aimed at remedying practical and judicial problems. That is, for instance, the purpose of the frequently seconded liaison officers (magistrates) who fulfil a useful function in the exchange of mutual legal assistance.

Moreover, an important function has been granted for the European judicial network, consisting of national authorities who bear central responsibility in their country for international cooperation in the field of the administration of justice. The network based in Brussels supplies information on the legal systems of the various countries and dealing with requests for legal assistance.

The Treaty of Amsterdam (in particular Article 31), it is true to say, underlines,

31. Kostovski, 1989; Van Mechelen, 1997.
32. Edwards, 1992.
33. Murray, 1996.
34. Saunders, 1996.
35. Rodriguez, 2000.

but does not concretise, the importance of further judicial cooperation. Nor was the relation with the police and supervision of joint criminal investigation further elaborated. Europol did not receive a mention. However, this did happen at the special Tampere summit dedicated to the administration of justice. Recommendation 46 announced the setting up of Eurojust. This entity was assigned the objective of – in cooperation, moreover, with the European judicial network – coordinating and supporting criminal investigations against highly organised crime, in which Europol's analyses in particular could be used.

It would seem to be no simple matter to give teeth to Eurojust, set up at Tampere, whose relevant agreements were confirmed in the Treaty of Nice. On the basis of various proposals – submitted by, on the one hand, Portugal, France, Sweden and Belgium and on the other hand Germany, which submitted a counter-proposal[36] – the Council decided on 28 September 2000, to set up a temporary entity for judicial cooperation (pro-Eurojust): which would not only have to improve cooperation between the member states with respect to criminal investigation and prosecution of highly organised crime, but must also encourage coordination in this area, with particular reference to the joint investigation teams. In anticipation of the definitive shape of Eurojust, the aim was not to curtail the tasks of Europol.

In its advice of 30 October 2000,[37] the European parliament opted for an improved connection with the institutions of the Community – thus with the supranationally organised first pillar – and saw Eurojust principally as a precursor of a European public prosecution service. This was only to be expected, since on the initiative of the European parliament within the framework of the Corpus Juris project[38] ideas about a supranational prosecution authority to combat fraud within the EU were elaborated.

The European Commission – which supports the idea of a European public prosecution service – reminded us of this in its communication of 22 November 2000,[39] but provisionally opted for strengthening the position of Eurojust, stating that Eurojust has to be more than a centre of expertise providing intelligence. Eurojust – upgraded to an organ of the Union – will have to be actively involved as an intermediary between national prosecution authorities, with concrete criminal cases. In this connection, Eurojust should work closely and efficiently with Europol. The Commission emphasises that, in its view, Eurojust can indeed be seen as Europol's judicial counterpart, but not as the institution that exercises 'judicial supervision' on Europol.

In its decree of 14 December 2000[40] the Council – notwithstanding the viewpoints of both parliament and Commission – held to its decision to set up a provisional entity for judicial cooperation. However, by the end of 2001, the setting up of Eurojust should be a reality. In the course of 2001, it should therefore become clear in which direction judicial cooperation will continue to develop. And above all, how judicial supervision over Europol is organised.

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36. Cf. C.J.C.E. Fijnaut, 'Europol en Eurojust', *Justitiële verkenningen* (2001)-2, pp. 17–21.
37. Bull, EU 11-2000.
38. M. Delmas-Marty and J.A.E. Vervaele, eds., *The implementation of the Corpus Iuris in the Member States*, Volume I (Antwerpen-Groningen-Oxford 2000).
39. Announcement of 22 November 2000, COM (2000) 746.
40. Pb. 2000, L 324.

One of the most important questions in this connection which will have to be addressed concerns its relation to Europol. Both institutions, after all, possess the same powers, viz. to get investigations in the member states off the ground. This requires rules about harmonisation. On the one hand, Eurojust is dependent on the intelligence that Europol possesses (analyses of crime), while on the other hand Eurojust – which does not have its own (supranational) powers of prosecution – may support and thereby strengthen the initiatives in the member states concerned through the national public prosecution authorities.[41]

In addition to developments relating to Eurojust, there has been a development in the direction of a European public prosecution service which should possess independent powers of prosecution. The European Council remains to be convinced of this idea. It seems to be somewhat insensitive to regulate Commission judicial supervision at the supranational level, that is to say in the first pillar, at the instigation of the European parliament and the European Commission. The idea of a European public prosecution service was not raised at the Nice summit.

Nonetheless, within the first pillar a truly European investigation service is already active, namely OLAF, the agency set up to combat EU fraud. The efforts to organise judicial supervision over the fight against fraud – a European prosecutor will be attached to OLAF – may be considered as a step towards further cooperation within the first pillar. Within the Dutch public prosecution service OLAF is even seen as a precursor of a European public prosecution service.[42] Although several problems remain to be overcome – the position of the public prosecution service is arranged differently in the various countries in the areas of monopoly of prosecution, expediency of prosecution and political accountability – the Netherlands is setting a course for the creation of a European public prosecution service. The growing influence of the police, the imminent harmonisation in the area of dealing centrally with criminal offences and the inter-wovenness of international organised crime are simply compelling reasons for a uniform approach to the public prosecution service.

7. DEMOCRATIC SUPERVISION

Because, since the Treaty of Maastricht, international policing and judicial cooperation has been subsumed under the third pillar and is therefore regulated at the inter-governmental level, supervision of the police, particularly where it concerns joint investigation and Europol's participation therein, has not been well regulated thus far. Whereas control over national police forces is in accordance with each country's legal system, Europol, when it involves concrete joint actions, especially on an ad hoc basis, is controlled by fifteen different parliaments.

In fact, the European parliament is offside. It has the right to read Europol's annual report, and is only consulted on an intended amendment to the Europol treaty. Effective control is exercised within the board of governors that was appointed over Europol,

41. Interview met G. Strijards en M. van Erve, 'Een autonome ontwikkeling, zoals het stijgen van de zeespiegel', *Opportuun* (2001) pp. 3–5.
42. Interview met G. Strijards en M. van Erve, *loc. cit.*

but this body is only accountable to the Council of Ministers. Even the role of the European Court of Justice in Luxembourg – which could play a consistent role in the interpretation of the Europol treaty – is marginalised, because the jurisdiction of the Court is not recognised by every country, and even that recognition is limited.

The solution would appear to be simple: the European parliament should acquire greater influence with respect to Europol. The problem is not only that Europol belongs to the third pillar, but also that there is no unanimity within the European parliament on the way in which Europol should continue to function in the future.

During the Inter-parliamentary Conference, held on 7 and 8 June 2001, in The Hague, an important step was taken to combine the powers within the European parliament in relation to Europol. At this conference, a resolution was adopted to set up PARLOPOL, a network of representatives from the European parliament and national parliaments which will promote European cooperation in the fields of policing and justice.

The same resolution requested the Belgian chairmanship to call a new meeting of PARLOPOL in the second half of 2001. Finally, there remain a number of matters to be worked out. How can control of Europol by the European parliament be strengthened? What is the relationship between the European parliament and the national parliaments in terms of exchanging information in relation to Europol. For the time being, the only effective parliamentary control that can be exercised is through the national minister concerned.

8. CONCLUSION

It would therefore appear to be inevitable. Real and effective supervision of the judiciary over international investigation and a real democratic control over the European functions of the police and the judiciary can only be introduced via the first pillar. Only in this way can the judiciary – unified in a European public prosecution service, assisted by a seriously well-equipped Eurojust as an organ of the Union – exercise real authority in respect of the police. Only in this way can the European parliament address the European institutions. And only in this way can both a European police force and also a European judiciary be democratically embedded.

The fact that Europol and the other various forms of international police cooperation continue to formally belong to the third pillar should not be an obstacle to organising supervision and control over trans-national and joint investigation within the first pillar. In practice, there are already various inter-connections between the first and the third pillar.[43] Thus representatives of OLAF (first pillar) may also participate in the activities of joint teams (third pillar), while the European Commission (first pillar) may ask member states why they have not complied with requests from Europol (third pillar). This is why, in the long run, the pillar structure will not be able to endure.[44]

43. The numerous inter-connections at police level between the first, second and third pillars are exhaustively analysed by Fijnaut (C.J.C.E. Fijnaut, 'Het politiebeleid in de Europees Unie' , in G.J.M. Corstens and M.S. Groenhuijsen, eds., *Rede en recht (Keijzer-bundel)* (Deventer 2000) pp. 249–277.).

44. C.J.C.E. Fijnaut, *loc. cit.*

Supranational direction of investigation and prosecution will inevitably reduce national influence. This is the price that the member states will have to pay, since otherwise real and effective (democratic and judicial) supervision of the police will never get off the ground. And, without effective supervision, there can be no question of a European police force being equipped with real executive powers. This would be unsafe, in a phase of European integration in which, in the field of the fight against crime, repression dominates.[45]

9. LITERATURE

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