



Justice & Home Affairs

Police Cooperation in the EU

Assigned readings for this session:

- *Quintel (2020), pp. 279-292*
- *Meško (2017), pp. 109-121*
- *Schalken & Pronk (2002), pp. pp. 70–82*

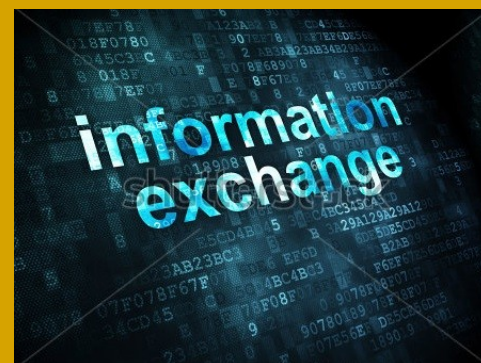
Eu

Prüm

Intelligence

Information exchange:

- *Personal data, info ID, number plates, mobile numbers, registration numbers., etc.*
- *Criminal record data*
- *Signals/Alerts (stolen, missing, kidnapped, wanted, etc.)*



Crime analysis:

- *Identify gaps and investigation priorities*
- *identification of trends and patterns in cross-border crime (and terrorism)*
- *threat assessments that serve as basis for decision-makers for identifying priorities*

Operational measures



Operational measures may imply coercive action:

- *arresting people,*
- *house searches,*
- *seizing property,*
- *taking DNA material from someone, or*
- *questioning a suspect*

They may include covert action:

- *cross-border surveillance,*
- *controlled deliveries,*
- *interception of telecommunications or*
- *the use of undercover agents*



Before Schengen

- *Berne club (1971); Trevi forum (1975); Vienna club (1979); Police Working Group on Terrorism (1979)*
- *Platforms for exchanging practical information*



1990

Schengen
Implementation
Convention

1995

- Schengen Implementation Convention (1990)
- *Title III includes rules on*
 - *Information exchange and*
 - *provides only operational procedures*
 - *cross-border surveillance or tracking*
 - *cross-border hot pursuits*

Schengen Implementation Conventions on operational measures

Cross-border surveillance or tracking

- *continuation of that surveillance in the territory of another country is authorised in cases when a*



Cross-border hot pursuits

- *pursuing suspects caught in the act to the territory of another country*
- *as a rule: prior notice to 'hosting' authorities*
- *in some cases, it may inform them later*
- *the pursuit has to be taken over as soon as possible by the 'hosting' authorities*
- *security search may be conducted; handcuffs may be used ; objects may be seized (but then handed over to 'hosting' authorities)*



1990

Schengen
Implementation
Convention

1995

Europol
Convention

1995

- **Europol Convention (1995)**
 - *created as an intergovernmental organisation, entirely dependent on member states*
- **The Europol's aim:**
 - *to improve cooperation between national authorities and efficiency of their actions in preventing and fighting international crime*
- **Main functions:**
 - *working as a hub for information and intelligence*
 - *supporting national investigations*
- **Europol's organization, then: control of Europol completely lied in the hands of the Council**

1995

SIS

1997

- Schengen Information System (SIS)
 - *legal basis SIC (Art. 93); in 1995 it became operational*
 - *a large-scale IT system*
 - *SIS II (2013)*
- *Its scope is nowadays defined in:*
 - *Council Decision 2007/533/JHA: Law enforcement*
 - *issuing and consulting alerts on missing persons and on persons or objects related to criminal offences*
 - *Regulation 1987/2006: Border control*
 - *for e.g. issuing or accessing “Schengen-wide alerts for refusing entry or stay into the Schengen area”*
- It is based on a ‘hit/no hit’ query function

The a 'hit/no hit' query function



- *SIS is an ICT structure for comparing anonymous profiles (for example fingerprints, missing persons, etc.)*
- *If there is a hit or a match, then additional (personal) data can be exchanged through the SIRENE network of national contact points (which requires formal, written requests)*



The SIS is made up of:

- *a central system (C-SIS) physically located in Strasbourg and*
- *national databases (N-SIS) in each of the participating states*

1995

SIS

2000

Convention on Mutual Assistance

2002

- Convention on Mutual Assistance in Criminal Matters (2000)
 - *in the field of police cooperation,*
 - *it provides for three operational tools:*
 - *use of undercover agents*
 - *joint investigation teams*
 - *controlled deliveries*



Operational tools provided by the 20

Use of undercover agents

The countries concerned can make separate agreements on the “detailed conditions, and the legal status of the officers concerned” (art. 14)

Joint investigation teams

- On the basis of an agreement between member states concerned*
- a team is set up for a specific aim involving investigating officers, judges and members of the public prosecution service*
- information can directly be shared without the need for formal requests*
- investigative (covert and coercive) measures can directly be requested between team members, without the need for letters rogatory (formal requests and procedure)*
- all team members can be present at house searches, interviews, and the like in all jurisdictions covered*

Controlled deliveries

a controlled delivery can be arranged as long as it is ensured that controlled deliveries may be permitted on another state’s territory in relation to criminal investigations into extraditable offences



2002

JIT Framework
Decision

2005

- JIT Framework Decision (2002)
 - *on joint investigation teams (JITs)*
 - *due to the slow progress towards ratification of the MLA Convention, the JIT concept was taken over and copy-pasted to secondary legislation of the EU*
 - *Framework Decision 2002/465/JHA*

2002

JIT Framework
Decision

2005

Prüm Treaty

2009

- Prüm Treaty (2005), signed by Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Spain
 - *function: facilitates automated exchange between national databases for specific investigations*
 - *automated searching **and transfer** of data in relation to*
 - *DNA profiles;*
 - *fingerprints; and*
 - *vehicle registration data*
 - *in 2008 the Council adopted Decisions (the “Prüm Decisions”) transferring most treaty provisions into secondary EU law*



2009

Europol
Decision

2009

- Europol Decision (2009/371/JHA)
- Europol transformed into a European agency
 - *receives funding from the Community budget (and staff is now EU staff)*
 - *Commission obtains a voting right in the Management Board*
 - *Europol director, the chairman of the board and the Presidency of the Council must appear for EP hearings*
 - *Europol's mandate extended to all serious forms of international crime.*

2009

Europol
Decision

2009

Lisbon
Changes

2016

- Lisbon Treaty on police cooperation
 - *OLP for collection, storage, processing, analysis and exchange of information*
 - *still: special legislative procedure for operational cooperation*
 - Europol
 - *acquired a treaty-based status of EU agency*
 - *its 'structure, operation, field of action and tasks' is subject to ordinary legislative procedure*



2016

Europol
Regulation

today

- **Europol Regulation (2016/794)**
 - *enhancing Europol's role as "hub for information exchange" and administrator of criminal intelligence, strategic analyses and threat assessments*
 - *"obligations [...] requiring Member States to provide Europol with the data necessary for it to fulfil its objectives." (Preamble)*
 - *the burden on member states to comply with a request by Europol to initiate an investigation and to explain in case an investigation has not been carried out*
 - *scrutiny of Europol's activities by the European Parliament and national parliaments (e.g. through annual reporting)*



Nowadays, Europol

- *uses its intelligence-gathering and analytical capabilities to support more than 40,000 international criminal investigations each year,*
- *identifies and assesses emerging security threats,*
- *may take part in Joint Investigation Teams (but has no direct powers of arrest and no authority to use coercive measures)*



Critical Issues

- *Weak operational capacity*
- *Getting stronger on intelligence*
- *No uniform legal framework*



Getting stronger on intelligence
Weak operational capacity
No uniform legal framework



EU starting as a level playing field of information exchange between national information systems: simplifying rules, mutual access and raising interoperability

only limited operational police cooperation, which has been largely left to multilateral intergovernmental cooperation

multi-

- *by combining and coordinating the knowledge, information, from its central intelligence position*
- *by delivering operational and strategic analysis, threat assessments*
- *able to provide topics for the European political agenda (Schalken & Pronk 2003; Piquet 2017)*



in the course of time Europol has managed to assert itself by and democratic scrutiny



Europol institutions acquired some leverage over Europol

Leading statement for in-class debate of tomorrow:

The EU should have its own EU Criminal Code and EU Criminal Procedure Code.

Leading statement for in-class debate of today:

Europol should acquire more operational powers

A marble statue of Lady Justice, the personification of the goddess of justice. She is depicted from the waist up, wearing a long, flowing robe. Her right hand is raised, holding a pair of black scales of justice. The scales are balanced, with two pans hanging from a central beam. The background is a soft, out-of-focus light blue and white. The word "END" is written in a bold, yellow, sans-serif font across the middle of the image.

END

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