

EUROPOL

***Organised Crime in the European Union –
The Role of Europol in International
Law Enforcement Co-operation***

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The Police Foundation

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Introduction

Earlier this month, Mr John Abbott, Director General of the National Criminal Intelligence Service, presented his Annual Report, saying:

"Serious and organised crime is becoming more international, faster moving and more sophisticated and its effects are increasingly felt in every local community throughout the United Kingdom.

"It can be seen, directly, in the supply of drugs or the passing of counterfeit currency and, indirectly, through the impact of fraud or the commission of crime to obtain money to buy drugs.

"... the threat is increasing and we need a robust response."

Taking up this theme, I wish to speak about the need for international co-operation if we are to make any major inroads into the problem; to explain the added value an organisation like Europol can bring to domestic policing efforts; and to outline my thoughts on the likely future shape of such co-operation.

First, though, let me give you an idea about the scale of organised crime and re-emphasise Mr Abbott's point about its impact at local community level.

Organised crime: it's your problem too

International organised crime is booming, a major concern for governments throughout the world. Today, in most countries, the principle threat to security is not a foreign power invading, nor even revolution; it is what organised crime is doing to society and its members. Freedom loses much of its meaning if it cannot be enjoyed in a secure environment, with the support of a system of justice in which all inhabitants can have confidence.

The EU is particularly vulnerable, in spite of its strong democratic foundations and reasonably effective police. It is a region without internal frontier checks of around 350 million relatively rich inhabitants – or, seen from the perspective of a major criminal organisation, 350 million potential victims. Controls have also been eased on the borders with Central and Eastern European countries, thus reducing the risks for those who smuggle human beings, drugs and stolen cars.

Criminals from all over the world use the Member States for their illegal ends. Domestic and ethnic crime groups within the European Union form alliances with international criminal organisations. Increasing sophistication of methods, modern technology and new economic practices facilitate contacts unhindered by distance. The United Kingdom, although it has the natural advantage of sea borders, is not immune from such exploitation. One only has to look at cross-Channel traffic: last year, the Port of Dover alone handled 20 million passengers and 1.5 million freight vehicles. Some 6 million containers a year pass through the Port of Rotterdam, one of many doors into the European Union from the whole world.

On the whole, our citizens are only aware of the relatively simple forms of crime: street violence, domestic burglary, thefts of cars and bicycles, or if a family member is addicted to drugs. They do not feel that international organised crime is their concern. This attitude is often shared by local politicians and police chiefs.

Yet even these 'simple forms of crime' tend to be linked to organised crime. At least 90% of the drug market in the European Union is controlled by criminal organisations operating at international level. Drug addiction and the need to

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obtain ready cash are the motives behind a large number – estimates vary from 50% upwards - of thefts, burglaries, minor frauds and prostitution.

Ground breaking research has been carried out in Kent, the Metropolitan Police, and other UK police forces, seeking to develop a base for intelligence led (as opposed to reactive) policing. This has revealed links on a previously unsuspected scale between local criminal activity and business-like structures extending far beyond. Research in other EU Member States is pointing to the same conclusion, and is forcing a major rethink on how crime should be tackled.

Professional burglars and car thieves follow a precise plan of action, their targets identified for them in advance, with yet other members of the organisation arranging for the removal and sale of the goods. Stolen identity papers, cheques and credit cards are being used in foreign cities and holiday resorts as early as the following day. Vehicles are trafficked to other parts of Europe, Africa and the Middle East. The international scale and logistical organisation of these teams is evident.

This means that focusing on the crime at the point of contact with the public – that is, the car theft, the burglary – is practically a waste of time. Instead, the police have to build up a picture of the organisation. Who are its directors? (Because one thing is becoming more and more evident. Crime does not just happen. It is a business.) Who does the paperwork? (Because you do not re-register a vehicle or export goods without paperwork.) Where and how are the funds and proceeds routed? (Because the spoils have to be moved, hidden, disposed of, turned to cash; then the money recycled and laundered before it can be enjoyed.)

From this knowledge can come precise targeting which will be far more destructive to a criminal organisation than arresting the odd burglar. To achieve this, however, demands a significant shift in police priorities: less concentration on the local criminal, more on the criminal organisation. This in turn means a shift in resources: less on local policing, more on national and international criminal intelligence and investigations, not all of it necessarily police centred. For at this level we need to engage all the relevant services including customs and immigration.

Calling for such a shift from local policing is not a popular message, as I am sure the Director General of NCIS has found; but it is none the less true, and ultimately to the benefit of local communities.

I have mentioned burglary and theft. Then there is violence. Fortunately, violent crime is not endemic in the UK. But even so, in a number of large English cities, where there have been several headline cases, and notoriously in some parts of the world, violence including hostage taking, and of course the threat of violence, figure prominently in organised criminal activity. Enforcement can be outsourced, with Yugoslav, Albanian, Russian or Chechnyan nationals hired by other criminal groups to apply the violence. It only took a few weeks and some killings for criminal organisations from the former Soviet Union and the former Yugoslavia to take over prostitution rackets and gambling places in Berlin, Hamburg, Budapest and other European cities

Whether aimed at fellow criminals, at business targets, or to silence witnesses and the press, when violence spills out into the public domain, ordinary citizens feel very vulnerable.

They also suffer indirectly. Bars, discotheques, restaurants, hotels, shops and other businesses which have to pay protection money pass the costs on in their

prices. The economic impact of all forms of crime is ultimately paid for by the citizen. Twice over, in fact, for in addition, there is usually no taxation revenue from illicit activities!

Environmental crime can risk health and threaten life. Toxic wastes are disposed of without regard to the impact on people, nature and the food chain. Product piracy and forgery – a thriving and lucrative business – can result in products manufactured with materials, dyes and preservatives that are harmful to health, and spare parts for vehicles which fail to meet safety standards.

Industry and commerce are particularly vulnerable to organised crime, whether as a target or as a means. The activities range from the traditional white-collar crimes such as large-scale fraud, embezzlement and breach of trust to robbery, extortion, computer fraud, industrial espionage and, as already mentioned, product piracy. In addition, organised crime groups attempt to control industry, banks, trade and transport enterprises, because they need them to support their activities. Factories and industrial production capital are essential for product counterfeiting. Drug trafficking, the illegal arms trade, smuggling in human beings all require transport and distribution networks. And, of course, the criminal proceeds have to be concealed, laundered, then enjoyed using the banks and other financial institutions.

States – which means ordinary citizens – also pay dearly for the rise in international organised crime. To combat it is resource intensive. Investigations are long and complex. Special bodies – like NCIS – have to be set up. By its nature crime does not generate tax revenue. Smuggling excisable goods takes this even further. For example, Vietnamese organised gangs in Germany are responsible for massive illicit imports and sales of cigarettes, with a loss of duty per container of around half a million pounds.

In this context, let me ask you which Eastern European state the following applies to: shootings, serious woundings, armed sieges, hi-jacks (including Russian transport), victims doused with petrol, public disorder incidents with weapons, revenge arson attacks? The answer is not Eastern Europe; it is an English Home County in 1999, in connection with the smuggling of alcohol and tobacco – also involving, as a side-line, drugs, illegal immigrants, counterfeit goods and forged bank notes.

All this means, very simply, that even in a stable democracy, where the rule of law is generally seen to prevail, organised crime is currently undermining the security and well-being of our citizens at every level and in every community. It is undermining its commercial infrastructure and institutions. And as we can see in many parts of the world, some not too far away, it can be a short, and some fear irreversible, step from that to an undermining of the State.

International Co-operation – legal hurdles

Let me now turn to the problems of international police co-operation. While criminals are free to operate across the European Union, restrictions and border controls still exist for law enforcement agencies. They have to work in a framework of fifteen or more different legal systems, and eleven languages, usually in total ignorance of what their colleagues elsewhere are doing.

Yet maintaining internal security has become a task too complex for any state to provide on its own. It requires intensive international co-operation among police, customs, border guards and judicial authorities. But co-operation means sharing and being prepared to give up something – one day it might be a piece

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of information, another day it might be the urge to act unilaterally against a minor criminal when holding back could lead to the capture of a more important one in another country. And that idea clashes headlong into the concept of national sovereignty.

In spite of the radical changes we have seen this century, sovereignty is deeply ingrained in the political culture of Europe as far as internal security is concerned. The basic elements of this concept are that a supreme and exclusive source of law is essential to a state and that only the sovereign state can have the means to enforce the law. No-one would argue about the supremacy of law, but I would suggest we can, and must, be more flexible in relation to who enforces it (not how – that must always be in strict accordance with the law). The difficulties encountered in international police co-operation stem from this attachment to sovereignty in law enforcement.

In fact states place themselves in an impossible situation, for by insisting on the legal inviolability of borders, they only handicap their law enforcement agencies. A simple example. A policeman in Dover who has to take a statement from a witness in Birmingham, say, 200 miles away, only has to pick up a phone to arrange it, jump in a car and do it. If the witness is in Calais, only 30 miles away, that is not allowed.

A criminal organisation can operate in one or several countries, from a 'business seat' or base in another, perhaps neighbouring, state where criminal, company and fiscal laws are more favourable or where law-enforcement pressure is less.

Many crimes are not punishable everywhere, which is a prerequisite for international cooperation and mutual assistance in international investigations. Moreover, the administrative procedures of various EU-Member States are not compatible with each other.

Practical difficulties

A major, practical, problem in the common fight against international organised crime is the fact that international criminal inquiries are still subject to slow, bureaucratic procedures, full of legal, political and administrative red tape.

A response to a query or request for information might take days, sometimes weeks. That is unacceptable when you are about to intercept a drugs shipment, search a building or detain an individual. Suspects are given time to destroy evidence, move the proceeds of crime to a safe place, and escape. It only takes a few seconds to move funds round the globe or to delete a computer file; the police must learn to move as fast.

It should also worry us that, across Europe as a whole, police and customs do not make enough use of what they already have. Information available to the police, customs and security agencies is collated and analysed at national level in only a small number of European states, and until the setting up of Europol, practically not at all at an international level. Valuable intelligence is thereby lost. I need hardly say to this audience that the UK is a shining exception, with NCIS setting a lead emulated in many other countries.

And even worse, investigations are frequently conducted in several states at the same time against the same criminals or criminal organisations, without the agencies concerned being aware of each others' interest in the criminals. There is an urgent need for the systematic co-ordination of law enforcement activities against internationally active criminal organisations, and also for international

law enforcement actions, such as simultaneous investigations, searches, seizures, controlled deliveries and arrests.

But any such co-operation has to be in a framework which respects citizens' rights. We have to balance police effectiveness with civil liberties: citizens are entitled to freedom from oppression as well as freedom from insecurity. The acquisition, storage and use of personal data must be protected, with a right of redress if abused.

As organised crime becomes more sophisticated, we have to adopt new approaches. Removal of border controls does not have to mean less security, but other measures are needed to compensate. There has to be less in-fighting between agencies. On the contrary, we should seek to adopt a multi-agency, inter-disciplinary approach, seeking to foster both a national and an international team spirit. Those of you who have attended certain EU working group meetings must be wondering which planet I have just stepped off, but that is no reason not to hope!

Cultural, professional, and legislative differences, together with issues of national sovereignty, present formidable obstacles to policing effectiveness. But I do believe that we can develop the legal instruments and organisational frameworks which will enable investigators to make the most of what is possible, rather than be frustrated by what is not.

Europol

I should now like to describe Europol's role and function. The establishment of a European Police Office is a cornerstone in the efforts of the European Union to strengthen law enforcement co-operation in a Europe without frontiers. In fact, we are seeing world-wide a trend towards open borders, associated with greater freedom of movement of people, goods, finance and services with their consequent problems. The Europol experience will be all the more valuable and have relevance beyond the confines of the European Union.

On 1st July 1999 Europol took up its activities in the new legal framework of the Europol Convention

But for more than 5 years we have been building up some experience and enjoyed successes in the fight against organised crime.

In a provisional phase, without a formal legal status, Europol started in January 1994 with support to Member States law enforcement agencies in the fight against drugs criminality and associated money laundering.

Since then Europol's competence has been extended to include the fight against organised illegal immigration, trafficking in human beings, especially where involving sexual exploitation, child pornography, trafficking in stolen vehicles, illicit trafficking in nuclear and radioactive materials, terrorism, counterfeiting of currency and other means of payment (with a particular emphasis on the EURO), and associated money laundering activities.

The Europol Convention will make it possible for Europol to deal with other forms of crime in due course. It must be emphasised, however, that Europol and its personnel will not have any executive powers. It is not a European FBI, and most certainly not 'Big Brother' watching over law-abiding citizens.

Europol is a joint European central bureau of police, customs and other related law enforcement authorities such as the Italian Guardia di Finanza enabling an

interdisciplinary and multi-agency approach. Until this summer, Europol was severely restricted in that it could not store personal data nor communicate with non-EU countries and other organisations. Nevertheless, it was still able to render a useful service by enabling prompt, multi-lingual exchanges of information between services in the various Member States, and helping with the co-ordination of multi-national operations.

Information Exchange, and Co-ordination

To be effective, national investigating authorities need relevant and comprehensive information on suspected persons, enterprises, banks, methods etc. with a minimum of delay.

Europol can now supply expertly prepared data from CID services, border police, gendarmerie, customs authorities and, to a limited extent, from security and administrative authorities of the EU Member States, third countries, international organisations and open accessible sources.

In keeping with the inter-governmental philosophy underpinning the Third Pillar of the EU, the Member States and their various law enforcement authorities have their own liaison officers within Europol. These liaison officers have access to some 40 national police and customs information systems as well as a number of administrative files and business registers, making Europol a unique clearing house for information relating to organised crime. This enables research and analysis on offenders, groups of offenders, addresses, phone numbers, and so on. Some information is so-called 'soft information' which has not yet been corroborated and requires evaluation before it can be useful for police work.

All such accesses to data within each Member State are limited to what is permissible under that Member State's data protection laws.

Investigating national authorities will not receive a curt reply to requests but a comprehensive picture of the contacts and activities of a criminal organisation or suspect in proceedings.

Our service is available around the clock, we work in all 11 EU working languages and we can be reached by secure electronic, as well as traditional, means. The particular added value of Europol is, first, security – we can and must guarantee the confidentiality of sensitive intelligence, thereby building up the trust which will overcome the barriers of sovereignty – and second, we provide a cultural and linguistic bridge between the often disparate services of the Union. I believe that Europol will set the standard for international law enforcement co-operation. Our aim is to make it as easy as picking up a phone, even for a detective who speaks no foreign language and who has never dealt with an overseas enquiry before.

Based on the information exchanged between Member States via Europol, links may be established between different crimes, leading to law enforcement agencies initiating simultaneous investigations in several countries. Further work is then co-ordinated through the Europol liaison officers, with Europol offering technical assistance and co-ordination.

In 1998 Europol gave support to 2,300 such investigations and co-ordinated more than 40 controlled deliveries of drugs and other illegal shipments running through three or more countries, as well as assisting a number of major investigations.

I regret the more interesting ones involving the UK are currently *sub-judice*. But to give a simple example: a container with a consignment of clothing from Panama arrived in Felixstowe, en route for Valencia. Our colleagues from the Customs were suspicious and – discreetly – found that cocaine was concealed with the clothing packages. If they seized the container, that would be the end of the matter; the criminals concerned would remain unknown. A quick decision was required, whether to allow the container to continue its journey as if all was in order, but under covert surveillance. Through NCIS and the Europol Liaison Officers, a positive answer was received from Spain and all the arrangements were made. The consignment was followed to Valencia and the operation resulted in the arrest of 8 individuals, all well placed in the criminal organisation, as well as the seizure of 270 kilos of cocaine, two vehicles, large amounts of cash and incriminating documents.

Another very recent UK case co-ordinated by Europol concerned illegal immigration into South-East England. An extra dimension was the violence perpetrated against some of the 'clients' who, as so often, are also the victims of the criminal gangs who profit from their plight.

Analysis and Intelligence Work

While information exchange and operational co-ordination are primarily reactive, Europol intends to be proactive in the fields of criminal intelligence and analysis.

Our analysts have already built up a strong reputation through the assistance they have given a number of Member States with complex investigations. Their skills and the advanced technology they can draw on enable them to make sense of large amounts of complex data, identifying links and suggesting lines of inquiry which are of considerable benefit to investigators and prosecutors.

I might add here that one country which did not need this service much in the early days was the UK, since you already have skilled analysts. In fact the techniques we use, and which are now being adopted across the European Union, are modelled on those practised in your NCIS. But of course, you need more than people and techniques – you also need the access to knowledge and information, and overall, the UK is one of the top two users of Europol, the other being Germany.

Until Europol officially started up its activities this summer, we could only get involved in response to requests for analytical and intelligence support, working within the legal framework of the Member State leading the investigation. Now that we are allowed, under the Europol Convention, to establish our own analysis projects, I see us moving progressively to a state where Europol is in a position to take the initiative and make suggestions.

At a strategic level, Europol gathers relevant information from police and other sources on a Union wide basis – and beyond – to provide an assessment of the main threats from, and trends in, organised crime. This enables us in the first instance to advise governments at EU level, legislators and police chiefs to help them decide on changes of legislation, policy, procedure and priorities.

We can then focus on certain areas of crime and the organisations behind them. For example, the manufacture and distribution of synthetic drugs; or illegal immigration networks from the Balkans.

Now that we have the ability to store personal data, and as we start employing specialists in various fields, we will be able to develop knowledge – the who,

where and how of crime - which will enable us to make proposals and work with the relevant services in the Member States in order to target and dismantle the criminal organisations concerned.

In terms of the technology, we have developed a state of the art analysis system which is attracting considerable interest from other agencies. For reasons of security and confidentiality that is, and will remain, only accessible to our analysts within Europol.

In addition, within the next two years we will be setting up a database of criminal activity and persons involved in organised crime, which will be accessible in all 15 Member States. I might add that this database will mainly be made up of data supplied by the Member States themselves. Then, for the first time, we will have a common pool of information, readily accessible for operational purposes, which also provides a European overview of serious and organised crime.

Europol is primarily dependent on NCIS and the partner agencies in the Member States, and will always seek to act in co-operation with Interpol and other international organisations. But all will stand or fall according to whether Member States supply good quality information to Europol. The signs are mixed, at present. If they do not, if we have to go and find it, then the calls for Europol to have executive powers may prove irresistible.

The place to ask

We also see Europol as a 'Centre of Excellence' which can set an example within the specialised domain of combating international organised crime. I have mentioned analysis; Europol will be a centre with expertise, technology and staff which we will make available - according to our means, of course - to our partners in the Member States. Or if we do not have them ourselves, we will seek to find them, and to that end we have already developed a database identifying relevant skills and resources which might be called on throughout the European Union.

Data protection

Given Europol's ambitious approach to intelligence collection and usage of data, especially personal data, it should come as no surprise that nearly half the provisions of the Europol Convention deal with data processing.

The basic requirements are set out in Article 14. Each Member State is required to implement in its national legislation a standard of data protection at least as high as that required under the Council of Europe 1981 Convention. Until then, they will not be allowed to participate in exchanges of personal data in the Europol framework.

Beyond the Convention there are specific rules for Europol, in particular the very detailed Analytical Work File regulations.

Satisfactory data protection rules are critical to the establishment of confidence in Europol. The rights of individuals to protection of data held on them must be carefully balanced against the need for effective law enforcement.

The provisions on data protection are comprehensive, but the real challenge will be to implement them in all the Member States. In some cases this may require a radical change in the culture of national law enforcement agencies. We may

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have to overcome some policemen's attitude that data protection rules and principles are only an obstacle to effective law enforcement. They need to understand that data protection is not about protecting criminals but about safeguarding civil liberties and rights.

Future Developments

Now to the immediate future. The Treaty of Amsterdam will allow

- the secondment of Europol staff to advise and support national authorities in their investigations;
- the co-ordination (without obligation) of investigations;
- the establishment of joint investigative teams in co-operation with Europol.

The Treaty does not give Europol new powers; in practice, all it does is encourage what is already possible. However, by also bringing the Schengen Treaty into the EU framework and closer to Europol, it brings potential improvements to one important area of police co-operation.

Europol is not designed to function like a European FBI. The Convention does not give Europol any executive authority. Europol officials will not be empowered to arrest criminals, carry out searches or seize evidence. There would be no EU-wide legal basis for discharging any such powers.

That is not to say that one cannot conceive of an international organisation having some investigative function: investigators of the Yugoslav War Tribunal in The Hague - working under UN Jurisdiction - are allowed to conduct enquiries throughout Europe and beyond and to question witnesses. The EC Anti-Fraud Unit OLAF (formerly UCLAF) also has a certain competence to carry out international investigations of offences against the European Union, under the control of the European Commission.

International Investigations

We must accept that well into the medium term, at least, all criminal investigations will have to be conducted under the laws of the individual Member States. But that is no bar to international, properly co-ordinated and supported operations within the framework of the Third Pillar.

It is becoming increasingly common at national level to set up task forces - multi agency joint teams - to handle complex, large-scale investigations, combining the powers, knowledge and technical capacity of several law enforcement agencies. I firmly believe that the same should and will happen in respect of international investigations. This will apply in particular where a case is beyond the reasonable means of local police to handle, and where several nations are seriously affected.

International task forces could be set up and based temporarily or permanently within Europol, where technical and support facilities in a secure, highly specialised environment with an international standing can be guaranteed. These task forces will work under the legal and political responsibility of the Member States only and will be under their control while operating on their territory. But - by agreement with all parties - Europol would normally take the

lead, its own personnel working with those of the Member States, ensuring a consistent and cost-effective approach.

Judicial co-operation

Police co-operation is already well ahead of judicial co-operation. This imbalance is potentially unhealthy, and can be a bar on effectiveness. A common legal framework is not achievable in the foreseeable future. But mutual recognition by Member States of each other's judicial supervision of international investigations would be a major step forward, even if this were to be on a voluntary, case by case basis. This could happen now, given the will.

A further step would be the mutual recognition of each other's legal procedures. Several major investigations involving UK officers working overseas have been potentially compromised by differences in, for example, the law relating to the disclosure of sensitive material.

Longer term, I would like to see a serious study into the possibilities of a European Prosecutor to supervise international criminal investigations. Here too, Europol could provide the model as well as the practical means for making this happen.

Conclusion

In conclusion, I will say that Europol is showing that international co-operation in law enforcement can work. It is providing valuable pointers for the way forward. But its success highlights the scale of the shortcomings overall.

International and organised crime has evolved and mutated, in line with the fundamental changes in the political situation in Europe, in technology, industry and commerce. Neither the law nor the responses of law enforcement authorities have been able to keep up. They are still obdurately national while crime, like normal commerce, is active across borders. But unlike legitimate businessmen and tourists, criminals can hide behind and derive profit from national frontiers.

The failure by governments to adapt properly or fast enough leaves our political, economic and social systems dangerously exposed. Individual measures alone will not be enough. An urgent, concerted response is required from the European Union which addresses a number of key issues including the way police and other agencies tackle organised crime; their willingness to share information and to co-operate with each other and with Europol; and the legal and procedural obstacles to cross-border investigations.

Then, we might stand a real chance to challenge the continuing growth of international crime and help preserve the security, not just of nations, but of local communities and of every citizen.

