

Europol post-Regulation Spider in the EU's transnational criminal enforcement web

Symposium 'Transnational Criminal Enforcement by EU Criminal Justice
Agencies: from Cooperation to Integration?'

17-18 October 2019 | Swedish Network for European Legal Studies | Lund

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Disclosure slide | background

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full-time academic

- international criminal law, EU criminal and JHA policy, cross-border police and judicial cooperation in criminal matters
- [other]

+25y working with/for (EU& MS) policy makers/police/judiciaries

with data protection background

- BE: Privacy commissioner Belgian DPA
- EU: member SCG SIS II, Eurodac, VIS, CIS, Europol Cooperation Board, BTLE (Borders, Travel, Law Enforcement subgroup EDPB)
- CoE: T-PD expert (Consultative Committee Convention 108 + 2nd Protocol)
- ICDPPC: expert group enforcement cooperation

research

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(Implicit) Symposium hypotheses | Approach

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post-Lisbon potential of EU agencies like Europol under-used

- due to MS' preference for “cooperative” “intergovernmentalism”
- leading to continued flaws in criminal enforcement
- whilst supranational (“integrated”) approaches should be pursued
- thus “reinforc[ing] their institutional capacity to more effectively combat transnational crime (Art 88 TFEU)”
- including the granting of operational/executive powers (to Europol)
- which moreover would enhance transparency-control-scrutiny

approach taken

- legal and policy perspective
- historical and contextual
- embedded/realist instead of theoretical/ideological

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Europol | maximum ex Article 88 TFEU

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1. mission: support and strengthen action by and cooperation of police and other LE services in preventing and combating SC affecting 2 or more MS, terrorism & crime affecting a common interest covered by a Union policy
2. Regulation: structure, operation, field of action and possible tasks
 - (a) the collection, storage, processing, analysis and exchange of information, in particular that forwarded by the authorities of the Member States or third countries or bodies;
 - (b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.

+ procedures for scrutiny by EP, together with national Parliaments
3. limitations
 - operational action to be carried out in liaison and agreement with the authorities of the MS/S whose territory is concerned
 - application of coercive measures: exclusively with national authorities

Operational cooperation & executive powers

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often labelled as 'judicial', but LE in reality/on the floor

- CISA + fully horizontalized since EU 2000 MLA Convention
- hot pursuit
- cross-border surveillance
- controlled deliveries (facilitated via ELOs)
- covert investigations
- joint investigation teams, supported by Europol/Eurojust

Article 89 TFEU (ex 32 TEU): underexplored 20y treaty acquis

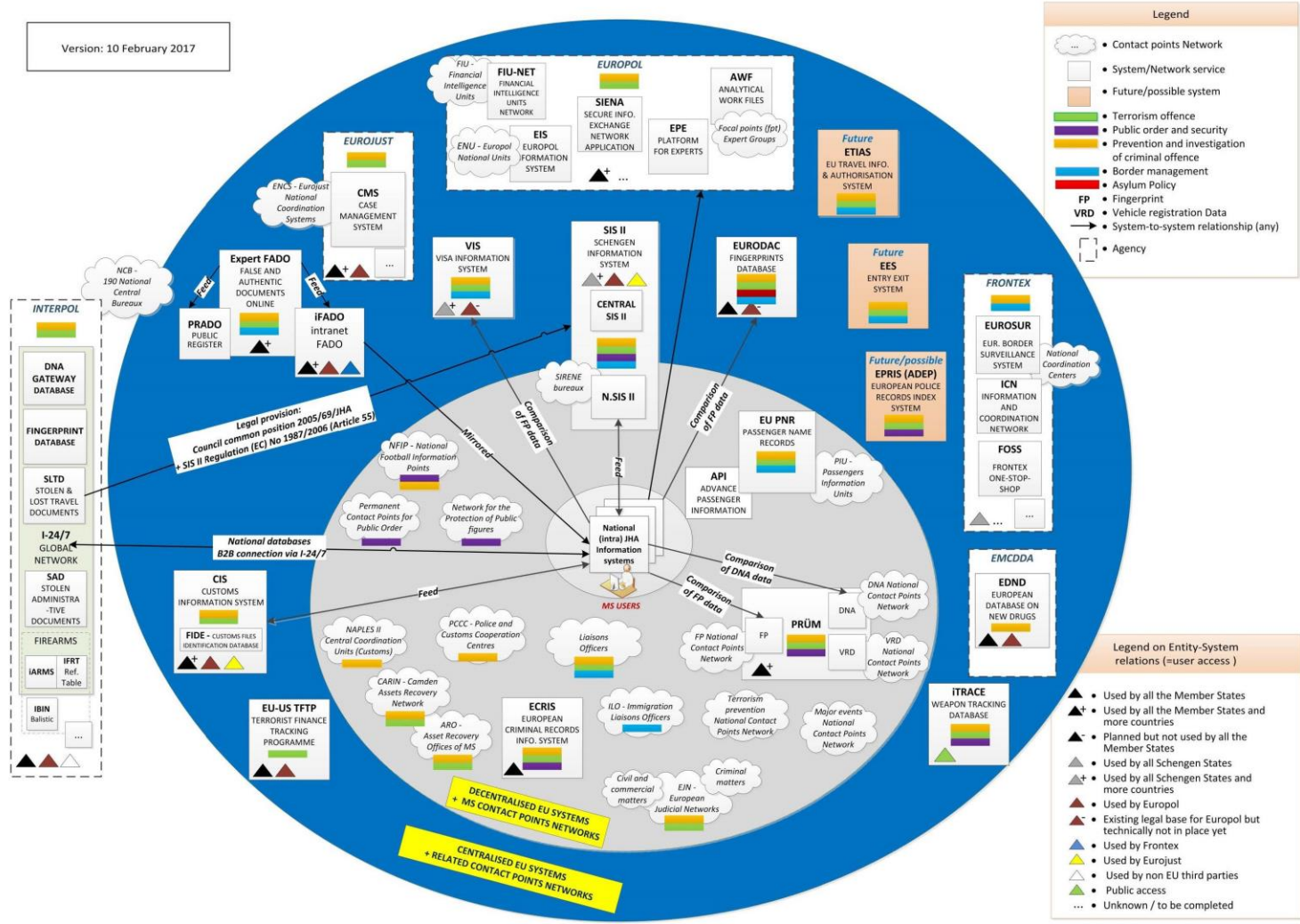
- The Council, acting in accordance with a special legislative procedure, shall lay down the conditions and limitations under which the competent authorities of the MS referred to in Articles 82 and 87 may operate in the territory of another MS in liaison and in agreement with the authorities of that State. The Council shall act unanimously after consulting the EP

Europol (Vermeulen et al)

- helpful to clarify EU/Europol & domestic/bilateral working spheres
- + right to evocation in case of MS sitting still (complementarity)
- limitation mandate to common offence components (EULOCS?)

Information-related cooperation | EU JHA context

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Information-related cooperation | Europol

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framework

- 1993 (Trevi)/1995 EDU
- 1995 Convention
- Protocols > semi-operational powers: right of initiative, participation JITS
- 2009 Decision (EU Agency), followed by evaluation study (Rand Europe)
- since 1 May 2017, replaced by 2016 [Regulation](#)

ELO's, [Siena](#), IDMC (formerly: [EIS](#), AWF's, Index System), possibility new types of processing (Article 39) (prior consultation EDPS) (e.g. European Tracking Solution), enhanced possibilities for private sector cooperation

conceptual & political development

- intelligence-led policing
 - situation reports > threat assessment: (S)OCTA), ROCTA, IOCTA, ...
- EPCTF (Cospol) > EU policy cycle | EMPACT
- COSI (internal security)

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Information-related cooperation | PoAvailability

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origin: 2004 The Hague programme

proposal (IRCP & EC): premature

2006 'Swedish' framework decision (first step)

- formal acceptance 'informal' police infoex (old boys networks)
- first compelling instrument (obligation to provide)
- mostly Siena-routed, cc'ing Europol where relevant
- oxygen for horizontal cooperation, without by-passing Europol

2005 Prüm acquis copied into 2008 EU Decisions

- [13.C 2016 SPOC Roadmap] Examine the possibility for Europol to become a partner in the Prüm framework with a view to enabling the cross matching of DNA, finger prints and vehicle registration data with 'Europol' third countries while respecting the owner principle

EPRIS (European Police Records Index System) (Unisys-IRCP)?

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Information-related cooperation | EIXM & SPOCs

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EU information exchange strategy (EIXM) | UMF3 | < Dapix SPOC (Resources, 1.2)

- multi-agency organisation, composed of staff coming from/belonging to different services and/or Ministries including criminal police, public order police, border guards, customs, and judicial authorities

Availability of national databases and networks (2)

- SPOC has access, direct (if necessary on hit/no hit basis) or at request (24/7, if necessary through on-call duty officers) from competent authorities, to the broadest range of relevant national databases and in any case to all those databases available to the authorities represented in the SPOC. This covers in particular law enforcement databases, identity documents database, vehicle registration, national visa database, immigration office database, prisoners database, DNA databases, fingerprint databases, information exchange with the national liaison officers, border control database, ANPR etc.

Information-related cooperation | EIXM channels

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- bilateral and regional instruments-channels-liaison officers
- SIRENE Bureau | SIS alerts | Cross border surveillance
- Europol (ENU, liaison officers at Europol): when EU reach and within mandate (terrorism, serious and organised crime, 2 or more MS concerned) | contributions to EMPACT projects, analysis, JITs | Exchange of classified information (up to EU RESTRICTED) | Exchange under Swedish Framework Decision (SIENA form/UMF3)
- Interpol (NCB, liaison officers at Interpol)
- jointly staffed border units/PCCCs | direct mutual access databases and during joint actions (e.g. Benelux 2018)
- coordination units for Naples II/ Anti-Fraud Information System (AFIS)/CIS/FIDE/FIU

Information-related cooperation I broader context

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ECRIS + ECRIS-TCN (with Europol access)

Frontex + Smart Borders: EES, ETIAS

3 SIS II recast Regulations (border checks, return, police/judicial cooperation)

Recast Regulation 45/2001 (Regulation (EU) 2018/1725 of 23/10/2018)

- new lex generalis for LE and judicial agencies, including Eurojust
- Europol & EPPO exempted only after tough discussions
 - superior data protection regime Europol: super-trustworthy environment; data owner principle; 4.4 matrix; EDPS + Europol Cooperation Board

2 Interoperability Regulations (borders and visa respectively police and judicial cooperation, asylum, migration)

- inclusive of Article 18.2a cross-referencing data EIS
- also of 18.2b and c (strategic and operational analyses) as well, thus establishing the Europol IDMC?

Europol's support, gateway and hosting functions

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specialised support

- documentation (including on [forensics](#)) | reports & [guides](#) | training
- thematic support centres
 - [European Cybercrime Centre](#) (EC3) – Internet Referral Unit (IRU)
 - [European Counter Terrorism Centre](#) (ECTC)
 - [European Migrant Smuggling Centre](#) (EMSC)
 - [Intellectual Property Crime Coordination Coalition](#) (IPC3)

gateway

- early warning notifications
 - [emerging new drugs](#) (in connection with EMCDDA) and [other](#)
- [Terrorist Financing Tracking Programme](#) (TFTP2)

hosting

- FIU-net (2B discontinued)
- European Tracking Solution (ETS)

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Conclusion

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impressive integrated information exchange environment

fully interoperable

Europol

- key support function
- based on added value
- gradually built up credibility
- by enhancing/supporting horizontal LE cooperation
- ever-growing direct EU policy-relevance + in relation to 3rd countries
- spider in a much wider enforcement web

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Q&A

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