POLICE COOPERATION

The European Union Agency for Law Enforcement Cooperation (Europol) is a central plank of the EU's broader internal security architecture. Cooperation and policies in the field of law enforcement are still developing, with a special focus on countering terrorism, cybercrime and other serious and organised forms of crime. The main goal is to achieve a safer Europe for the benefit of all the EU citizens, in compliance with fundamental rights and data protection rules, as requested several times by the European Parliament.

LEGAL BASIS

Articles 33 (customs cooperation), 87, 88 and 89 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

Effective police cooperation is a key plank in making the Union an Area of Freedom, Security and Justice based on respect for fundamental rights. Cross-border law enforcement cooperation — involving the police, customs and other law enforcement services — is designed to prevent, detect and investigate criminal offences across the European Union. In practice, this cooperation mainly concerns serious crime (such as organised crime, drug trafficking, money laundering, euro counterfeiting, trafficking in human beings and cybercrime) and terrorism. Europol is the EU’s law enforcement agency.

ACHIEVEMENTS

A. Beginnings

Police cooperation among the Member States began in 1976 through what was known as the ‘Trevi Group’, an intergovernmental network of representatives of justice and home affairs ministries. The Treaty of Maastricht then set out matters of common interest which gave legitimate grounds for police cooperation (terrorism, drugs and other forms of international crime). It also established the principle of creating a ‘European police office’ (Europol), which initially took shape as the Europol Drugs Unit. The Europol Convention was signed on 26 July 1995, though the office did not officially begin its work until 1 July 1999, on the basis of the enhanced powers granted by the Treaty of Amsterdam (signed on 2 October 1997). However, police cooperation had already progressed before the advent of Europol. With the creation of the Schengen Area in 1985, at first involving only a handful of Member States,
cross-border police cooperation had become a reality (see also 4.2.4). With the entry into force of the Treaty of Amsterdam, the Schengen acquis — including its police cooperation aspects — was incorporated into EU law, though it fell under the ‘third pillar’ of intergovernmental cooperation. The same intergovernmental approach was used for police cooperation measures adopted by a small group of Member States under the Prüm Treaty, which contained provisions on the exchange of DNA, fingerprints and vehicle registration details. The Prüm Treaty was fully introduced at Union level by Council Decision 2008/615/JHA of 23 June 2008.

B. Current institutional framework

The institutional framework has been considerably simplified by the Treaty of Lisbon (TFEU), with most police cooperation measures now adopted under the ordinary legislative procedure (codecision) and subject to judicial review by the Court of Justice. Nevertheless, even leaving to one side the specific features of the Area of Freedom, Security and Justice (opt-outs for Ireland and Denmark (Protocols 21 and 22 annexed to the TFEU) and a privileged role for national parliaments (Protocols 1 and 2)), police cooperation, together with judicial cooperation in criminal matters, has not been entirely woven into the Community framework and retains some of its original features:

— The Commission shares its power of initiative with the Member States, provided they represent a quarter of the members of the Council (Article 76 TFEU);

— The European Parliament is merely consulted on operational cooperation measures, which are adopted unanimously by the Council. In the absence of unanimity in the Council, it is possible for nine or more Member States to work together on the basis of enhanced cooperation. In this scenario, the European Council suspends the process in order to seek consensus (‘emergency brake’ mechanism under Article 87(3) TFEU).

C. Main legislative acts on police cooperation adopted under the ordinary legislative procedure

— Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA (known as the ‘Cybercrime Directive’). Member States were required to incorporate this directive into national law by 4 September 2015;


— Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime. Member States were required to incorporate the directive into national law by 25 May 2018;


— **Directive (EU) 2016/1148** of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems (NIS) across the Union. Member States were required to incorporate this directive into national law by 9 May 2018;


— **Directive (EU) 2019/1153** of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA. Member States are required to incorporate this directive into national law by 1 August 2021.

D. Police cooperation agencies and other related bodies

1. **European Union Agency for Law Enforcement Cooperation (Europol)**

*Europol* is an agency whose main goal is to make Europe safer. It supports the EU Member States in their fight against terrorism, cybercrime and other serious and organised forms of crime. Europol also works with many non-EU partner states and international organisations. Europol serves as a support centre for law enforcement operations, and as a hub for information on criminal activities.
Large-scale criminal and terrorist networks pose a significant threat to the internal security of the EU. The biggest security threats come from terrorism, international drug trafficking and money laundering, organised fraud, the counterfeiting of euros, and trafficking in human beings.

Europol has set up several specialised units to respond to these threats:

— European Cybercrime Centre (EC3) to strengthen the law enforcement response to cybercrime in the EU and thus help to protect European citizens, businesses and governments from online crime;

— European Migrant Smuggling Centre (EMSC) to support the EU Member States in targeting and dismantling the complex and sophisticated criminal networks involved in migrant smuggling;

— European Counter Terrorism Centre (ECTC) is an operations centre and hub of expertise that reflects the growing need for the EU to strengthen its response to terror;

— Intellectual Property Crime Coordinated Coalition (IPC3) provides operational and technical support to law enforcement agencies and other partners;

— European Financial and Economic Crime Centre (EFECC) is an operational platform to support Member States in ongoing cases in the areas of financial and economic crime;

— FIU.net is a decentralised and sophisticated computer network supporting the Financial Intelligence Units (FIUs) in the EU in their fight against money laundering and the financing of terrorism;

— The EU Internet Referral Unit (EU IRU) detects and investigates malicious content on the internet and social media networks.

Europol was established under the Europol Regulation. It is based in The Hague, the Netherlands.

In order to achieve greater accountability for the agency, a Joint Parliamentary Scrutiny Group (JPSG) on Europol was set up under the Europol Regulation. Article 88 of the TFEU provides for scrutiny of Europol’s activities by the European Parliament, together with national parliaments. According to Article 51 of the Europol Regulation, ‘the JPSG shall politically monitor Europol’s activities in fulfilling its mission, including as regards the impact of those activities on the fundamental rights and freedoms of natural persons’. The seventh meeting of the JPSG was organised on 28 and 29 September 2020 via remote participation due to COVID-19 restrictions.

2. European Union Agency for Law Enforcement Training (CEPOL)

CEPOL is an agency dedicated to developing, implementing and coordinating training for law enforcement officials. CEPOL contributes to a safer Europe by facilitating cooperation and knowledge sharing among law enforcement officials of the EU Member States, and to some extent from third countries, on issues stemming from EU priorities in the field of security; in particular, from the EU policy cycle on serious
and organised crime. The Law Enforcement Training Agency is established under the CEPOL Regulation. It is based in Budapest, Hungary.

3. Standing Committee on Operational Cooperation on Internal Security (COSI)

Under Article 71 of the TFEU, ‘a standing committee shall be set up within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union. Without prejudice to Article 240, it shall facilitate coordination of the action of Member States’ competent authorities. Representatives of the Union bodies, offices and agencies concerned may be involved in the proceedings of this committee. The European Parliament and national parliaments shall be kept informed of the proceedings.’ COSI was established by the Council Decision of 25 February 2010 on setting up the Standing Committee on operational cooperation on internal security (2010/131/EU).

4. EU Intelligence and Situation Centre (EU INTCEN)

The EU Intelligence and Situation Centre (EU INTCEN) is not, strictly speaking, a police cooperation body, since it is a body of the European External Action Service (EEAS) and only deals with strategic analysis. Nevertheless, it contributes to police cooperation by producing threat assessments based on information provided by intelligence services, the military, diplomats and police services. INTCEN is also able to make useful contributions from an operational perspective by providing, for example, EU-wide information on the destinations, motives and movements of terrorists.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has played a key role in shaping EU legislation in the field of police cooperation by making the safety of European citizens a political priority. Furthermore, under the ordinary legislative procedure, it has been working on improving police cooperation on an equal footing with the Council.

The main instrument for police cooperation is Europol, which is a central pillar of the EU’s broader internal security infrastructure. As part of the Europol reform, Parliament actively advocated greater parliamentary scrutiny and improved data protection rules. Parliament will be involved in strengthening Europol’s mandate, and the Commission adopted proposal on Europol on 9 December 2020.

On 17 December 2020, Parliament adopted a resolution on the EU Security Union Strategy for the 2020-2025 period, which was proposed by the Commission on 24 July 2020. The Strategy proposes the tools and measures to be developed over the next five years to ensure security in our physical and digital environment, ranging from combating terrorism and organised crime, to preventing and detecting hybrid threats and increasing the resilience of our critical infrastructure, to promoting cybersecurity and fostering research and innovation.

Parliament is currently preparing reports and resolutions on the following issues: artificial intelligence in criminal law and its use by the police and judicial authorities in criminal matters; preventing and combatting trafficking in human beings and protecting victims of trafficking; combatting gender-based violence and cyberviolence; child sexual abuse online; European production and preservation orders for
electronic evidence in criminal matters; reform of e-Privacy and the confidentiality of electronic communications; the functioning of the Schengen area; and preventing the dissemination of terrorist content online. During a debate on fighting terrorism and freedom of expression in Parliament’s plenary session on 11 November 2020, MEPs unanimously condemned recent terrorist attacks in Europe, called for unity and a robust response to terror attacks. They also called for additional efforts to promote fundamental freedoms and integration, and also referred to the need to urgently tackle online aspects of radicalisation and hate speech. On 9 December 2020, the European Commission a communication entitled ‘A Counter-Terrorism Agenda for the EU: Anticipate, Prevent, Protect, Respond’.

Police cooperation and internal security policies are still in development, with attention focused on countering pan-EU threats and crime more effectively and, particularly for Parliament, doing so in accordance with rules on fundamental rights and data protection. While there has been a complete overhaul of the rules applying to EU police cooperation agencies, concerted efforts will still be needed to further strengthen police cooperation measures, in particular on the exchange of data and evidence between Member States’ law enforcement authorities and between them and EU agencies. Parliament urged the Member States to make the necessary technical standardisation improvements with regard to data quality and establish a legal framework for a future approach of ‘information sharing by default’. In this context, the EU will have to carefully address challenges related to new technologies and artificial intelligence, encryption, and the interoperability of information systems for borders, security and migration.

As the number of tasks increases and expectations grow, adequate financial and human resources for EU agencies need to be ensured. The role of Parliament, moreover, will probably shift from introducing new legislation to monitoring the implementation of the legislation.

Parliament is now a fully-fledged institutional actor in the field of internal security policies and should play a greater role in evaluating and defining police cooperation policies.

Alessandro Davoli
12/2020