



## POLICE COOPERATION

With the entry into force of the Treaty of Lisbon and the abolition of the ‘pillar structure’, the European Union now has more resources to promote police cooperation, which is also subject to greater parliamentary scrutiny. The main instrument for cooperation is the European Police Office (Europol), which is a central plank of the broader European internal security architecture. Cooperation and policies are still developing, with attention focused on countering pan-EU threats and crime more effectively and, particularly for the European Parliament, doing so in compliance with fundamental rights and data protection rules.

### LEGAL BASIS

Articles 33 (customs cooperation), 87, 88 and 89 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 (organised crime, drug trafficking, trafficking in human beings, cybercrime) and terrorism.

### 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 [2.1.3](#) and [5.12.4](#)). 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 the United Kingdom, 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);
- acts adopted prior to the entry into force of the TFEU could not be the subject of infringement proceedings or a referral to the Court of Justice for a preliminary ruling for five years (Protocol No 36 annexed to the TFEU). This period ended in December 2014.

## **C. Police cooperation agencies and other related bodies**

### **1. The European Police Office (Europol)**

Europol's role is to help national police authorities and other similar authorities to act more effectively by facilitating cooperation between them. The focus of that cooperation is on preventing and combating terrorism, cybercrime, drug trafficking and other forms of serious cross-border crime.

Since 1 January 2010, Europol has been an EU agency, financed by the EU budget, with more than 900 staff (including 185 liaison officers) based at its headquarters in The Hague. Europol's chief aim is to improve the exchange of information among police authorities. To that end, it produces a Serious and Organised Crime Threat Assessment (SOCTA) to serve as a basis for Council decisions, as well as the European Union Terrorism Situation and Trend Report (TE-SAT). Europol does not have any coercive powers — it cannot make arrests or conduct searches — but its operational powers have gradually grown. The Council Act of 28 November 2002, for example, enabled Europol to participate in joint investigation teams and to ask the Member States to initiate criminal investigations. It has also enhanced its analytical capabilities, in particular with the establishment in January 2013 of the European Cybercrime Centre (EC3), which is responsible, inter alia, for the Internet Organised Crime Threat Assessment (iOCTA). Europol has been at the forefront of the EU law enforcement response to emerging threats. Following the terrorist attacks in Paris and Copenhagen in early 2015, the Justice and Home Affairs Council mandated Europol to establish an Internet Referral Unit designed to combat online terrorist propaganda and other extremist activities. The new unit began its work on 1 July 2015. Subsequently, following the November 2015 Paris attacks, the Council expanded Europol's counterterrorism mandate further with the launch, on 1 January 2016, of the new European Counter Terrorism Centre, to which Member State counterterrorism experts are seconded to boost cross-border investigation capacity. Similarly, in the wake of the huge influx

of irregular migrants to the EU in 2014 and early 2015, Europol launched Joint Operation MARE in March 2015 in a bid to enhance efforts to counter people-smuggling. Lastly, Europol is authorised (under a Council decision of 27 March 2000) to negotiate agreements with third countries and non-EU bodies. It has, for instance, signed cooperation agreements with Interpol and the United States.

On 27 March 2013, the Commission submitted a legislative proposal to the European Parliament and the Council to amend the current Europol decision, which included a proposed merger of Europol and the European Police Training College (CEPOL). Rejected by both the Council and Parliament, the merger has now been shelved. Parliament has recently reached an agreement with the Council in trilogue negotiations on the new regulation — subject to approval by the plenary. The new regulation would make it easier for Europol to set up specialised units to respond to emerging threats, would lay down rules for existing units (such as the aforementioned counterterrorism units), and would provide for a more robust data protection regime, enhanced governance and greater accountability for the agency, to be achieved through a Joint Parliamentary Scrutiny Group bringing together the European Parliament and national parliaments.

## 2. The European Police College (CEPOL)

Police officer training is an important aspect of police cooperation. To this end, CEPOL was set up in 2000, initially in the form of a network of existing national training institutes and subsequently as an EU agency (Council Decision 2005/681/JHA of 20 September 2005). Initially located in Bramshill in the UK, since 1 October 2014 CEPOL has been headquartered in Budapest.

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

From the very beginning, operational cooperation has been a stumbling block to the development of police cooperation. Aside from the limited progress made through Europol and the deployment of joint investigation teams, cooperation was initially limited to a biannual meeting from 2000 onwards of the Club of Berne, a forum bringing together heads of national security services from a number of European countries and geared towards voluntary information exchange in fields such as counter-espionage, organised crime and terrorism. Building on this basic idea, the Treaty of Lisbon goes further, providing, in Article 71 TFEU, the legal base for the Standing Committee on Operational Cooperation on Internal Security (COSI), which was formally established by a Council decision of 25 February 2010. COSI's responsibilities are:

- to evaluate the general direction of, and shortcomings in, operational cooperation;
- to adopt concrete recommendations;
- to assist the Council under the 'solidarity clause' (Article 222 TFEU).

COSI is not, however, a European 'FBI' capable of conducting its own operations, and nor does it participate in the legislative procedure. It is anchored in the national capitals, with representatives from the Member States meeting in Brussels, where they are supported by justice and home affairs advisers from the permanent representations. Representatives from other internal security organisations, such as Europol, Eurojust (see [5.12.6](#) on judicial cooperation in criminal matters) and Frontex (see [5.12.4](#) on external border management) frequently attend COSI meetings.

#### 4. EU INTCEN

The European Union Intelligence Analysis Centre (EU INTCEN) is not, strictly speaking, a police cooperation body, since it is part of the European External Action Service (EEAS). Nevertheless, it makes a contribution 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**

With the entry into force of the Treaty of Lisbon in December 2009, the European Parliament's role in justice and home affairs was considerably enhanced. The position it has taken on police cooperation in parliamentary resolutions reflects both its desire to assert its position and the relatively early stage of development of EU police cooperation. On the latter point, Parliament has frequently bemoaned the lack of a truly joined-up approach to internal security. Its wide-ranging resolution of 25 November 2009 on the Stockholm Programme criticised, for instance, 'the lack of a comprehensive master plan setting out the overall objectives and architecture of the EU's security and border management strategy [...] combining efforts and resources at the disposal of Member States, European institutions, specialised EU agencies and information exchange networks'. In its resolution of 9 July 2015 on the European Agenda on Security, it voiced much the same misgivings, deploring the fact 'that despite numerous calls by Parliament, an evaluation of the effectiveness of existing EU instruments — also in the light of new security threats the EU is facing — and of the remaining gaps, is still lacking' and arguing that 'such an exercise is needed to ensure that the European security policy is efficient, necessary, proportionate, coherent and comprehensive'. It has also frequently cautioned that there has to be an appropriate balance between freedom and security in policing and law enforcement.

The other primary concern for the European Parliament, as indicated above, has been to establish its position as an institutional player on internal security. While COSI remains formally off limits in terms of parliamentary scrutiny, Parliament has been keen to underscore its new powers on police cooperation. In its resolution of 2 April 2014 on the mid-term review of the Stockholm Programme, it recalled that it 'is now a fully-fledged institutional actor in the field of security policies' and 'should play a crucial role in the evaluation and definition of internal security policies'. In its resolution of 9 July 2015 on the European Agenda on Security, Parliament reiterated that it should be involved in 'setting the political priorities and strategic objectives' of the Agenda. Unquestionably, Parliament has been stamping its authority on internal security policy. As part of the Europol reform, it actively advocated greater parliamentary scrutiny and improved data protection rules. It had also called for the Data Retention Directive<sup>[1]</sup> to be repealed on the grounds that it was disproportionate, before it was ultimately struck down by the Court of Justice in the landmark ruling of April 2014. Finally, Parliament resisted considerable pressure from the Commission and the Member States for the swift adoption of a European Passenger Name Record system for counterterrorism purposes. An agreement has now been reached between Parliament and the Council, subject to adoption in plenary in early 2016, with the final text including a number of Parliament-backed data protection safeguards and a clause requiring a review of the directive two years after transposition into national law.

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[1] Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC.

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