Module 2

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Lesson 1: Mutual legal assistance in criminal matters in the EU

1. Background to mutual legal assistance in criminal matters in the EU

Mutual legal assistance in criminal matters is a well-established principle in international judicial cooperation. Mutual assistance is relied on when a state is unable to continue with an investigation or procedure on its own and requires another state's help, for instance to hear witnesses, to carry out surveillance on the other state's territory, or to extradite persons.

Traditionally, judicial cooperation in criminal matters was characterised by the 'request' principle, according to which one sovereign state makes a request (known as "letters rogatory") to another sovereign state, which then decides whether or not to comply with it. According to the principle of non-interference, no direct contacts were made between judicial authorities but instead diplomatic channels were used. The role of the judge was thus relatively limited. According to the rules of the requested state, requests usually had to be verified in substance, for instance on double criminality (according to which assistance was refused for acts constituting a crime or criminal offence in the requesting state if they did not also constitute a crime or criminal offence in the requested state), etc. No or only very broad deadlines were set to reply to a request. Consequently, the mutual legal assistance procedure was slow and cumbersome.

2. European Convention on Mutual Assistance in Criminal Matters of 1959

The first major instrument for mutual legal assistance in criminal matters at European level was created by the Council of Europe in 1959 and has been amended three times by three additional protocols since. Under the European Convention on Mutual Assistance in Criminal Matters, parties agree to afford each other the widest measure of mutual assistance with a view to gathering evidence, hearing witnesses, experts and prosecuted persons, etc. The Convention sets out rules for the enforcement of letters rogatory by the requested party that aim to procure evidence (hearing of witnesses, experts and prosecuted persons, service of writs and records of judicial verdicts) or to communicate evidence (records or documents) in criminal proceedings undertaken by the judicial authorities of the requesting party.

The Convention also specifies the requirements that requests for mutual legal assistance and letters rogatory have to meet (transmitting authorities, languages, grounds for refusal). The first additional protocol (1978) to the Convention completes it by withdrawing the possibility to refuse assistance solely on the ground that the request concerns an offence which the requested party considers a fiscal offence. It extends international cooperation to the service of documents concerning the enforcement of a sentence and similar measures. Thirdly, it adds provisions relating to the exchange of information on judicial records. The second additional protocol (2001) modernises the provisions of the convention by extending the range of circumstances under which mutual
legal assistance may be requested, facilitating assistance and making it faster and more flexible.


On 29 May 2000, the EU Council of Ministers adopted the Convention on Mutual Assistance in Criminal Matters between the member states of the EU. In drawing up the Convention, the Council strongly relied on the Council of Europe’s Convention on Mutual Assistance in Criminal Matters of 1959. The primary aim of the Convention was to develop and modernise the existing provision of mutual assistance by extending the range of circumstances in which assistance may be requested, by facilitating assistance to make it quicker and more effective (e.g. by introducing direct contacts between judicial authorities) and by developing new measures to facilitate and further cross-border investigations.

The Convention introduced new techniques applicable for mutual assistance (video-conferencing, teleconferencing and interception of telecommunications). It also adopted rules on data protection. Some drawbacks still remain, however, such as the absence of real deadlines and standard forms. Furthermore, the traditional grounds for refusal as set out in the 1959 Convention have been kept (when execution is likely to prejudice the sovereignty, security, public order or other essential interests of the state). The 2001 Protocol to the Convention is an integral part of the Convention. It provides for supplementary measures such as requests for information on banking transactions to combat crime in general and organised crime in particular. The Convention entered into force in August 2005. The Convention has not yet been ratified by all EU member states (Greece, Ireland and Italy have yet to ratify it).
Lesson 2: Mutual recognition in criminal matters in the EU

1. History of mutual recognition in criminal matters in the EU

The traditional system of mutual assistance often proved to be both slow and complex. Thus, the idea of introducing a system of mutual recognition of decisions and enforcement of judgments in criminal matters began to be discussed at EU level. The idea was stimulated by the system of mutual recognition that had been developed and used in civil matters since the 1968 Brussels Convention, which laid down rules on the jurisdiction, recognition and enforcement of judgments in civil and commercial matters. Moreover, some forms of mutual recognition had already been embodied in several international (Council of Europe) criminal justice instruments since the 1970s.

At the European Council meeting of Tampere in October 1999, it was decided that the principle of mutual recognition should become the “cornerstone” of judicial cooperation in both civil and criminal matters within the EU. Mutual recognition means that a member state recognises and executes judgments or judicial decisions (including pre-trial decisions) taken in another member state as if they were its own, even if the outcome in its national system would have been different. The mutual recognition principle has had an express legal basis since the entry into force of the Lisbon Treaty on 1 December 2009.

Since Tampere, some criminal justice experts have raised doubts about the extent to which this principle can be applied in criminal matters given the severe impact on suspects and defendants of unsound rulings that would have to be endorsed by foreign courts without reviewing their substance. To counter these critics, it was argued that such problems could be compensated by a set of guarantees for common minimum procedural standards. The Council, however, has not succeeded in finding an agreement on such common standards. This approach nevertheless remains the least contentious method to pursue integration in criminal matters. The alternatives would be “harmonisation” measures to create common substantive criminal laws or “approximation” measures aimed at reducing differences between national criminal laws by introducing identical or similar definitions of certain criminal offences, sanctions, and procedural rules for the member states.

Following the European Council of Tampere, the Commission published a programme of measures to implement the principle of mutual recognition of decisions in criminal matters. In this programme, the Commission notes that the principle is founded on notions of equivalence and trust. The programme refers to decisions under criminal law (all rules laying down sanctions or measures to rehabilitate offenders) which are final (i.e. decisions by courts and certain administrative tribunals, the outcome of mediation procedures and agreements between suspects and prosecution services). Compared to traditional instruments of judicial cooperation, mutual recognition instruments are characterised by the following key features: direct contacts between judicial authorities; limited grounds for refusal, limitations to the principle of double criminality, speed (short deadlines), and simplicity (standard forms and certificates).
Strong emphasis continues to be placed on mutual recognition by, for instance, the 'Stockholm Programme', which was endorsed by the European Council in December 2009. The programme states that: "the EU should continue to enhance mutual trust in the legal systems of the member states by establishing minimum rights as necessary for the development of the principle of mutual recognition and by establishing minimum rules concerning the definition of criminal offences and sanctions as defined by the [Lisbon] Treaty. The European judicial area must also allow citizens to assert their rights anywhere in the Union by significantly raising overall awareness of rights and by facilitating their access to justice". The Stockholm Programme reiterates that mutual recognition rests on trust between the member states and on the understanding of their respective national criminal laws. It also presents mutual recognition in a broad fashion, indicating that it "could extend to all types of judgments and decisions of a judicial nature, which may, depending on the legal system, be either criminal or administrative".

2. Mutual recognition instruments

Some forms of mutual recognition were already embodied in international instruments years before the Tampere European Council made the principle “the cornerstone of judicial cooperation in criminal matters” within the EU in 1999. As far as the recognition of final decisions is concerned, a number of instruments have been drawn up at the level of the Council of Europe (e.g. the European Convention on the International Validity of Criminal Judgments of 1970, the Convention on the Transfer of Sentenced Persons of 1983) and the former European Community (e.g. the Convention on the Enforcement of Foreign Criminal Sentences of 1991). Recognition of a decision also means that other states must take that decision into account, i.e. that a person will not be prosecuted again for the same act on the same set of facts (principle of ne bis in idem) and that a final court decision will not be challenged. At the level of the Council of Europe, the European Convention on the Transfer of Proceedings in Criminal Matters of 1972 already contained ne bis in idem rules. At the European Community level, the Convention on Double Jeopardy of 1987 as well as the Convention implementing the Schengen Agreement of 1990 contained rules on the application of the ne bis in idem principle.

After the Maastricht Treaty of 1992, the first instruments using mutual recognition in the framework of the EU were the Convention on the Protection of the European Communities' Financial Interests of 1995 and the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of member states of the EU of 1997. However, until the European Council of Tampere in 1999, none of these instruments had come into force between all EU member states.

Furthermore, many aspects of mutual recognition had never been addressed before, in particular those concerning pre-trial orders or the taking into account of any foreign criminal judgments. The first steps in applying the principle of mutual recognition for decisions in criminal matters at EU level were made when negotiations about a Framework Decision on the recognition of orders for the freezing of properties or evidence began in 2001. In 2002, influenced by the terrorist attacks of 9/11, a historical breakthrough was achieved with the agreement on the so-called 'European Arrest Warrant'.
The main areas on which member states are focusing their efforts to gradually achieve mutual recognition of criminal decisions in the EU include taking into account final criminal judgements already delivered by the courts of another member state, enforcement of pre-trial orders, sentencing and post-sentencing follow-up decisions, and detention and its alternatives. The most recent development aims to enhance the protection granted to victims of crime or possible victims of crime who move within the EU through a 'European Protection Order'. Under this order, a victim who is subject to a protection measure (for example in a case of domestic violence) will still be protected when s/he moves to another member state. Member States have until 11 January 2015 to comply with the Directive creating the EPO.

3. The European Arrest Warrant (EAW)

The EAW was designed to replace the traditional extradition system by requiring a judicial authority from one member state (the executing judicial authority) to recognise and execute requests for the surrender of a person made by the judicial authority of another member state (the issuing judicial authority). As of 1 July 2004, the Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between member states has replaced existing texts such as the Council of Europe’s 1957 Convention on extradition and its additional protocols of 1975, 1978 and 2010 for the member states of the EU. The EAW only applies within the territory of the EU. Relations with third countries are therefore still governed by traditional extradition rules. In the framework decision, the EAW is defined as any judicial decision issued by a member state with a view to the arrest or surrender by another member state of a requested person for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order. The EAW applies where a final sentence of imprisonment or a detention order has been imposed for a period of at least four months; for offences punishable by imprisonment or a detention order for a maximum period of at least one year. Furthermore, the framework decision includes a list of 32 offences that give rise to surrender under an EAW without verification of the double criminality of the act.

Although some of the national implementing laws have been criticised for not fully complying with the Framework Decision[1] and several implementing laws were challenged before national constitutional courts and the Court of Justice, the short time-period in which it was possible to make the EAW operational throughout the EU is so far unique in the field of judicial cooperation in criminal matters in the EU.

More information on the EAW, especially on the implementing legislation of each member state and the case law of the ECJ, can be found on the website of the TMC Asser Institute.

The website of the European Judicial Network (EJN) constitutes an excellent source for practitioners with several tools to facilitate the practical implementation of the EAW such as:
• The **EAW Atlas**, which helps judicial authorities to identify the competent executing authority and provides basic information on the legal requirements in the executing Member State.

• The **EAW Compendium Wizard**, which helps to draft an EAW form.

• The **EJN Library** containing practical information about the EAW such as the full text of the legal instrument, forms, notifications, handbook, case law and national legislation.


### 4. Gathering of foreign evidence

Obtaining evidence has traditionally been done by using various international and EU instruments. The basic framework was provided by the **European Convention on Mutual Assistance of 1959** and its additional protocols, which was supplemented within the EU by the Schengen Convention and the **Convention on Mutual Assistance in Criminal Matters** and its **Protocol**. The drawbacks of the system resulting from these arrangements have been a consistently slow and inefficient procedure, a variety of different rules, and legal barriers arising from grounds of refusal.

In its programme of measures to implement the principle of mutual recognition of decisions in criminal matters, the European Commission underlined the aim to ensure the admissibility of evidence, the prevention of its disappearance and the enforcement of search and seizure orders so that evidence can be quickly secured in a criminal case. The programme tried to find feasible ways to ensure that the existing reservations, declarations and grounds for refusal provided for in the European Convention on Mutual Assistance in Criminal Matters and in the Schengen Convention could not be invoked between the EU member states. Furthermore, it called upon member states to take steps to draw up an instrument on the recognition of the freezing of evidence. This was translated into the Framework Decision on the execution of orders freezing property and evidence, which was adopted in 2003. In its **Action Plan Implementing the Stockholm Programme**, the European Commission underlined the need for a new and comprehensive system for obtaining evidence in cross-border cases.

In 2003, the European Commission presented a proposal to create a so-called ‘**European Evidence Warrant**’ (EEW), which would apply the principle of mutual recognition to obtaining certain types of evidence for use in criminal proceedings. The proposal focused on obtaining objects, documents and data gained under national procedural law measures such as production orders and search and seizure orders. It also covered information already contained in police or judicial records, such as records of criminal conviction. The proposal did not address initiating the taking of evidence (in whatever manner) from suspects, defendants, witnesses or victims, as the idea was to address these issues in a further proposal. After years of debate in the Council, the proposal was formally adopted
in December 2008. Member states had until 19 January 2011 to implement the framework decision into their national legislation.

In April 2010, eight member states (Belgium, Bulgaria, Estonia, Spain, Luxembourg, Austria, Slovenia and Sweden) launched an initiative for a directive introducing a ‘European Investigation Order (EIO)’ in criminal matters. The EIO should cover, as far as possible, all types of evidence and replace all existing instruments in the area and would form a major step in the field of mutual recognition in criminal matters in the EU. In December 2011, the Council reached a general approach on the draft text allowing negotiations with the European Parliament.

5. Enforcement of foreign criminal sentences

Mutual legal assistance with regard to executing sanctions issued by another state has been an important issue within the Council of Europe since the 1970s. In the EU, the development of the principle of mutual recognition in criminal matters opened the way to several initiatives and instruments regarding various aspects of this issue.

One of the main fields in this area is the transfer of sentenced persons. In 1983, the European Convention on the transfer of sentenced persons concluded in the framework of the Council of Europe provided for the transfer of sentenced persons, whereas the first EU instrument, the Convention on the enforcement of foreign criminal sentences of 1991, only provided for the enforcement of custodial and pecuniary penalties. The latest instruments adopted by the EU on this topic are the Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty and the Framework Decision on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions. Adopted in November 2008, these Framework Decisions should have been implemented by member states into their national legislation by 5 December 2011 and by 6 December 2011 respectively.

Mutual recognition instruments also apply to other phases of a trial. In the pre-trial phase, the Framework Decision on the application of mutual recognition to decisions on supervision measures as an alternative to provisional detention (the ‘European supervision order’), which was adopted in October 2009, lays down rules according to which one member state recognises a decision on supervision measures issued in another member state as an alternative to provisional detention, monitors the supervision measures imposed on a natural person and surrenders the person concerned to the issuing state in case of breach of these measures. It should have been implemented by member states into their national legislation by 1 December 2012.

Other instruments which are already fully operational include the Framework Decision on the execution in the European Union of confiscation orders of 2006 and the Framework Decision on the application of the principle of mutual recognition to financial penalties of 2005.
6. Exchanging criminal records

At EU level, in 2005, the Council adopted a Decision on the exchange of information extracted from criminal records, which defines and extends the obligation of the convicting member states to transmit notice of convictions to the member state of nationality of the sentenced person and lays down the framework for a computerised conviction information exchange system. Seeking to go further, in June 2006, a group of six member states presented a common project on networking of national criminal records providing for a secure electronic connection between their national criminal records systems. Continuing on this line, in February 2009, the Council adopted a Framework Decision on the organisation and content of the exchange of information extracted from the criminal record between Member States which lays the ground rules for the mandatory transmission of information on convictions to the country of the person's nationality, as well as for the storage of such information by that country and for the retransmission, upon request, to other member states. The Framework Decisions should have been implemented into member states' national legislation by 27 April 2012. Finally, in April 2009, the legal base for a European Criminal Records Information System (ECRIS) was established. This information system will allow for automated exchange of data between central criminal records and creates an obligation for Member States to use correlation tables (offences and sanctions) to transmit information on convictions. Although the information system will not allow direct access to the criminal records, it will speed up the transmission of requests and replies. Member states had until 7 April 2012, to ensure that ECRIS is operational.

In addition to these technical means to exchange criminal records, an instrument that puts more flesh on these bones is the Framework Decision on taking account of convictions in the course of new criminal proceedings. Adopted in 2008, this instrument determines the conditions under which, in the course of criminal proceedings against a person in one member state, previous convictions handed down against that person for different acts in other member states can be taken into account. Member states had until 15 August 2010 to implement the Framework Decision into their national legislation.
Lesson 3: European criminal procedure

1. European criminal procedure

“European criminal procedure” today is far from being a common “European Code of Criminal Procedure” applicable in all EU member states. The basis for criminal procedures in the EU member states is still their national criminal procedure codes. “European criminal procedure” today only implies EU initiatives that aim at approximating sectors of national law, that regulate cooperation in case of conflicts of jurisdiction, and that set up EU agencies to cooperate with the national authorities in criminal procedures (e.g. Europol, Eurojust, the European Judicial Network, etc).

Various aspects of criminal procedure have already been touched upon by different pieces of EU legislation. The concept of mutual legal assistance and mutual recognition, especially the EAW and the EEW, are the main examples of this approach. More specific areas are procedural safeguards for suspects and defendants, the execution of orders freezing property, the standing of victims in criminal proceedings and the establishment of agencies coordinating and facilitating the procedure in the EU.

2. Procedural rights

One of the central issues of approximating criminal procedure at EU level is the challenge of guaranteeing a common standard of procedural rights. In 2003 the Commission issued a Green Paper (reflection paper) which examined whether it was appropriate and necessary to introduce in EU member states common minimum standards for procedural safeguards for persons suspected, accused, prosecuted, sentenced or for criminal offences. The Commission identified five areas of rights which should be respected by judicial authorities in the EU: the right to legal assistance and representation; the right to an interpreter or translator; the right of vulnerable groups to proper protection; the right of nationals of other member states and of third countries to consular assistance; and the right to information in criminal proceedings (a ‘Letter of Rights’).

In 2004, the Hague Programme reaffirmed the mutual recognition principle and called for measures to secure and strengthen it, including the establishment of minimum safeguards for persons facing criminal investigation. In this context, the Commission proposed in 2004 a Framework Decision on certain procedural rights.
in criminal proceedings throughout the EU but despite years of negotiations agreement on it could not be reached in the Council. The Commission eventually tabled another proposal in July 2009 focusing on the rights to interpretation and translation.

Finally, in 2009, under the Swedish Presidency, EU justice ministers agreed on a roadmap to foster protection of suspected and accused persons in criminal proceedings. By means of a step-by-step approach, the roadmap outlines six measures to be introduced one after the other in the years to come:

A. Right to interpretation and translation;
B. Information on rights and information about the charges;
C. Legal advice and legal aid;
D. Communication with relatives, employers and consular advice;
E. Special safeguards for vulnerable suspects and accused persons; and
F. Green paper on pre-trial detention

2010 saw the adoption of the first measure under the roadmap, a Directive on the right to interpretation and translation in criminal proceedings.

The second measure, the Directive on the right to information in criminal proceedings, introducing the so-called “Letter of Rights”, was adopted in May 2012.

On 8 June 2011, the Commission issued the third measure of the roadmap, a Proposal for a Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate with a third party upon arrest. Furthermore, a Green Paper on the application of EU criminal justice legislation in the field of detention was published in June 2011.

The first new attempt to enhance procedural rights in the EU was made in March 2009 with the adoption of Council Framework Decision 2009/2099/JHA. This Framework Decision modifies the existing legislation on mutual recognition (EAW, financial penalties, confiscation orders, custodial sentences, supervision of probation measures) with regard to the grounds for non-recognition related to cases where the decision to be executed was rendered in the absence of the person concerned at the trial. It aims at harmonising and bringing more detail to these grounds for non-recognition as well as to the exceptions.
Lesson 4: European substantive criminal law

As with European procedural law, the notion of a “European substantive criminal law” today does not refer to any form of joint European criminal code. The EU’s competences in the area of substantive criminal law have developed only gradually since the introduction of the former third pillar by the Treaty of Maastricht of 1992. Under that Treaty, no legal basis for the approximation of substantive criminal law was foreseen. First steps were already taken at that time, however, through several “conventions” and “joint actions”. Under the Treaty of Amsterdam of 1997, a legally binding framework was provided for accelerating efforts to approximate the member states' substantive criminal law in certain areas. This was done via the adoption of framework decisions. The Nice Treaty of 2001 did not bring any changes in this regard.

The Lisbon Treaty continues to allow for the approximation of criminal law, in accordance with the provisions of Articles 82-83 of the Treaty on the Functioning of the European Union (TFEU – see Article 67(3)). Under both provisions, the European Parliament and the Council may, by means of "directives" adopted under the ordinary legislative procedure (i.e. co-decision), establish minimum rules concerning not only procedural issues such as the admissibility of evidence and the rights of individuals in criminal proceedings, but also substantive criminal law, such as the definition of particularly serious criminal offences with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. These areas of crime are the following:

- Terrorism
- Trafficking in human beings and sexual exploitation of women and children
- Illicit drug trafficking
- Illicit arms trafficking
- Money laundering
- Corruption
- Counterfeiting of means of payment
- Computer crime
- Organised crime

Following developments in serious crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. However, in this decision, it must act unanimously after obtaining the European Parliament's consent.

Article 83(2) TFEU has also introduced a sort of ‘annex competence’ to adopt substantive criminal law rules to protect EU policy in other areas: "If the approximation of criminal laws and regulations of the member states proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned (such directives shall be adopted by the same
ordinary or special legislative procedure as was followed for the adoption of the harmonisation measures in question, …

At the 1999 European Council of Tampere it was decided that efforts to approximate substantive criminal law should be focused on a limited number of sectors, such as financial crime, drugs trafficking, trafficking in human beings, particularly the exploitation of women, sexual exploitation of children, high-tech and environmental crime. In most of these areas, such legislation has been launched and some has already entered into force.

The list of adopted framework decisions (as these instruments used to be called before the Lisbon Treaty) aiming at approximating substantive criminal law in the EU includes:

- **The Council Framework Decision of 13 June 2002** on combating terrorism (and a Framework Decision amending it, which was adopted on 28 November 2008, and which expands the former’s scope);
- **The Council Framework Decision of 19 July 2002** on combating trafficking in human beings (which was replaced by Directive 2011/36/EU, see below);
- **The Council Framework Decision of 25 October 2004** laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking; and

The Stockholm Programme stresses that the legislative priority for 2010-2014 "should be given to terrorism, trafficking in human beings, illicit drug trafficking, sexual exploitation of women and children and child pornography and computer crime". New directives in these areas that have been proposed or are already adopted include:

- **Proposal for a Directive on attacks against information systems and repealing Council Framework Decision 2005/222/JHA**
- **Proposal for a Directive on criminal sanctions for insider dealing and market manipulation**
- **Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA**

Member states have until December 2013 to comply with these directives.
Lesson 5: Police cooperation in the EU

1. Introduction

With the entry into force of the Treaty of Lisbon, the rules on police cooperation can be found under Title V (Articles 67-89) TFEU and particularly Articles 87-89.

Before the Lisbon Treaty's entry into force, the Commission shared the right to propose legislation with one or more member states, its adoption required unanimity in the Council, the European Parliament was only consulted, and the Court of Justice had only limited competence. The unanimity requirement, in place since the Treaty of Maastricht, made reaching agreement on many initiatives to enhance police cooperation either impossible or solely based on the lowest common denominator. As a result, some initiatives for enhanced police cooperation have even been taken outside the EU framework.

With the Lisbon Treaty, however, while the Commission continues to share the right to propose legislation with (now at least a quarter of) the member states, decisions will mostly be adopted by qualified majority in the Council and in co-decision with the European Parliament (e.g. measures concerning the collection, storage, processing, analysis and exchange of relevant information; common investigative techniques in relation to the detection of serious forms of organised crime; changes to Europol's structure and tasks). A number of decisions will continue to require unanimity and for the European Parliament only to be consulted (e.g. laying down the conditions and limitations under which the member states' competent authorities may operate in the territory of another member state in liaison and in agreement with the authorities of that state).

2. Beginning of police cooperation in the EU

Intergovernmental police cooperation has already existed among member states since the seventies, for instance in the framework of the so-called 'Trevi Group' of 1975 – a group of 12 member states of the then European Communities to counter terrorism and coordinate policing. Another informal network was the Police Working Group on Terrorism set up in 1986 to promote cooperation at a more operational level than the Trevi working groups.

3. Schengen

During the 1980s, a debate opened up about the concept of free movement of persons in Europe. Some member states felt that this should apply to EU citizens only, which would require maintaining internal border checks in order to distinguish between citizens of the EU and non-EU nationals. Others argued in favour of free movement for everyone, which would justify ending internal border checks altogether. Since the member states found it
impossible to reach an agreement, a small number of them (France, Germany, Belgium, Luxembourg and the Netherlands) decided in 1985 to proceed on their own (i.e. outside the framework of the treaties and without the other member states) and to create a territory without internal borders between them.

The **Schengen Agreement of 1985** signed on a boat on the Mosel river near the Luxembourg village of Schengen in the vicinity of France and Germany. It aimed at progressively abolishing internal controls at common borders, thus ensuring free movement of persons within the “Schengen area” whilst applying compensatory measures to strengthen the management of external frontiers. The Convention implementing the Schengen Agreement was signed in 1990 and aimed at defining the conditions and guarantees needed to implement free movement within the Schengen area. When it entered into force in 1995, this Convention became the first instrument to abolish controls on people at the internal borders of its signatory states and to harmonise controls at the external frontiers of the Schengen area according to one single set of rules.

This freedom of movement in the Schengen area was politically only acceptable if accompanied by compensatory measures in order to maintain a high level of security in the area without internal border controls. These compensatory measures involved setting a common visa policy for stays of up to three months (visas for more than three months are determined nationally), improving coordination between the police, customs and the judiciary, and taking additional steps to combat problems such as terrorism and organised crime. Under these instruments, each signatory state agreed to reintroduce controls on mutual borders only in specific circumstances (generally a serious threat to public policy or public safety) and on a temporary basis. The agreement, the convention and related documents, which began as cooperation between some EU member states outside the EU's framework, were incorporated through the Treaty of Amsterdam in 1997 into the EU treaties and institutional framework as the 'Schengen acquis'.

The Schengen border-free area currently includes a total of 25 countries: 22 of the 28 member states (except Bulgaria, Cyprus, Ireland, Romania and the United Kingdom), plus Iceland, Norway and Switzerland, which are not EU member states but considered as 'associated states'. While Ireland and the United Kingdom are not part of the Schengen area, they take part in certain elements of the Schengen acquis on the basis of an 'opt-in' regime. This means that they can choose which elements of Schengen they want to be part of. They take part in some aspects of Schengen (e.g. police and judicial cooperation) and vote on these issues in the Council; they do not take part in the Schengen rules on free movement of persons, external border controls or visa policy and do not vote on them.
Ireland and the United Kingdom keep their own border controls and have long constituted a common free travel area on the basis of a bilateral agreement on free movement.

Today, the village of Schengen also hosts the European Museum Schengen.

### 4. Joint cooperation centres

Encouraged by the new possibilities offered under the Schengen Convention, various joint police stations and police and customs cooperation centres have been set up at many internal borders to ensure that law-enforcement agencies on both sides of an internal border work together (examples include joint centres between Germany and France, France and Italy, Austria and the Czech Republic). Cooperation in these centres involves facilitating exchanges of information, joint operations and controls, and the planning of co-ordinated actions.

Gemeinsames Zentrum der deutsch-französischen Polizei- und Zollzusammenarbeit in Kehl

Gemeinsames Zentrum der grenzüberschreitenden Polizei- und Zollzusammenarbeit in Luxemburg

### 5. European Police Chiefs Task Force

In 2000, the European Police Chiefs Task Force was set up as an informal network with the aim of developing personal links between the heads of the various law enforcement agencies across the EU, to exchange information and to assist with the development of more spontaneous interaction and closer cooperation between the various national and local police forces and other EU law-enforcement agencies. The Task Force’s informal structure, however, provoked some critical questions with regard to its legal statute, its cooperation with the Council and Europol, and its democratic control and transparency. In 2010, the work of the Task Force was taken over by the newly created Council Standing Committee on Internal Security (COSI).
6. European Crime Prevention Network

In 2001, the European Crime Prevention Network (EUCPN) was launched with the aim of spreading knowledge of best-practice policing methods and bringing together people interested in the fight against crime from across Europe. The network consists of a national representative nominated by each member state, a substitute representative, and other crime prevention experts including practitioners and academics.

7. Europol

One of the EU’s major law-enforcement cooperation initiatives is the establishment in 1995 of the European Law Enforcement Agency (Europol) via the Europol Convention. Europol’s objective is to improve the effectiveness of cooperation between the member states primarily by pooling intelligence to prevent and combat serious cross-border crime in the EU, whether organised or not. Contrary to a wide-spread assumption inspired by the movie “Ocean’s Twelve”, Europol is not based in Amsterdam but in The Hague and Europol officers have no coercive powers. Europol became fully operational in 1999. The Europol Convention was amended by the Europol Decision, which introduced a series of changes to Europol.

On 27 March 2013, the Commission published a proposal for a new Regulation establishing a European Union Agency for Law Enforcement Cooperation and Training (Europol). Main novelties of the Regulation include the proposal for Europol to take over and build on the tasks formerly carried out by CEPOL, to enhance the supply of information by Member States to Europol, to increase its accountability according to the requirements of the Treaty of Lisbon, to reinforce its data protection regime, and to improve its governance.

For more details on Europol, see Module III of these e-learning materials.

8. CEPOL

The European Police College (CEPOL) for training police officers at European level was established in 2005. CEPOL is an EU agency located in Bramshill, United Kingdom. Its mission is to bring together senior police officers from police forces in Europe – essentially to support the development of a network – and encourage cross-border cooperation in the fight against crime, public security and law and order by organising training activities such as courses, seminars and conferences, and by carrying out research.

On 27 March 2013, the Commission published a proposal for a new Regulation establishing a European Union Agency for Law Enforcement Cooperation and Training (Europol). One of the main novelties of the Regulation include the proposal for Europol to take over and build on the tasks formerly carried out by CEPOL. By merging Europol and CEPOL, the
Commission expects synergies and efficiency gains as well as more targeted and relevant training for law enforcement officers. The proposed ‘Europol Academy’ would be responsible for supporting, developing, delivering and coordinating training for law enforcement officers at the strategic level while CEPOL’s current mandate only covers senior police officers.


In the fight against organised crime and terrorism, it is commonly understood that exchanging information is one of the most important tools. Since the terrorist attacks in New York in 2001, Madrid in 2004 and London in 2005, several legislative initiatives and instruments have been launched at EU level to facilitate the exchange of information between EU law-enforcement authorities.

One aim is to provide direct online access to available information and to index data for information not accessible online to all law-enforcement authorities in the EU in relation to certain types of data (DNA profiles, fingerprints, ballistics, vehicle registration information, telephone numbers and other communications data, with the exclusion of content data and traffic data unless the latter are controlled by a designated authority, minimum data for the identification of persons contained in civil registers). This should happen in accordance with the principle of “availability”, set out in the conclusions of the 2004 European Council of The Hague: “a law-enforcement officer in one member state who needs information in order to perform his duties can obtain this from another member state and […] the law-enforcement agency in the other member state which holds this information will make it available for the stated purpose, taking into account the requirement of ongoing investigations in that state”.

At this point in time, finding agreement on this very ambitious idea is not in sight. Nevertheless, several smaller steps have been taken to enhance the exchange of information in the EU. In 2005, the exchange of information on terrorist offences with Europol and Eurojust was enforced by a Council Decision.

The so-called ‘Swedish Initiative’ that came into force in 2006 simplifies the exchange of information between law-enforcement authorities by introducing time limits for responses and limiting grounds for refusal.

The biggest step was taken by the so-called ‘Treaty of Prüm’, an initiative between several member states which introduces, among others, automated access to DNA data, dactyloscopic (fingerprinting) data and vehicle registration data.
The Council Decision which transfers the ‘Third Pillar’ regulations of the Treaty of Prüm into the framework of the EU was adopted in August 2008. Member states had to implement general aspects such as the automated sharing of DNA files by August 2009, and provisions on online access by August 2011. An agreement has been set up allowing EU member states and Iceland and Norway to grant each other access rights to their ‘Prüm data’. In March 2010, the Spanish Presidency launched a proposal on a Model Agreement for setting up Joint Cooperation Teams under the Prüm Decision (joint patrols and other joint operations in cases of disasters, serious accidents, mass gatherings and other major events). The draft model agreement, which is very similar but not to be confused with the Model Agreement on Joint Investigation Teams, foresees standard provisions for setting up such joint teams (e.g. place and period of the operation; responsible officers; specialists, advisers; executive powers of the seconded officers; logistic modalities; costs).

As the system of information systems and instruments in the EU has become more and more non-transparent, Justice and Home Affairs Ministers have called for the setting-up of an Information Management Strategy for EU Internal Security.

One major factor in this strategy was the establishment of the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, which started operations on 1 December 2012. The Agency is in charge of the operational management of large-scale information technology systems, namely the Schengen Information System (SIS II), Visa Information System (VIS), and Eurodac. At a later stage, after gradually building up its expertise, the Agency is supposed to develop into a centre of excellence for the development and operational management of other future systems in this policy area. The seat of the Agency is in Tallinn, Estonia, while the operational management of the large-scale systems is carried out in Strasbourg, France with a backup site in Sankt Johann im Pongau, Austria.

While the access of Europol and law enforcement agencies to the Visa Information System has been agreed, their access to Eurodac is still debated.

10. Joint Investigation Teams (JITs)

A new and important tool for police cooperation within the EU is the possibility of setting up joint investigation teams under Article 13 of the 2000 EU Convention on Mutual Assistance in Criminal Matters (or under the Framework Decision on JITs of 13 June 2002 until the abovementioned Convention is applicable between all EU member states). JITs can be
established between two or more member states for a limited period and a specific purpose in order to carry out investigations in one or more of the member states setting up the team. This is done on the basis of a JIT agreement outlining the rules governing the cooperation between the member states concerned. Article 13 of the Framework Decision foresees special rules with regard to the organisation and composition of the team (for instance team leader, involvement of Europol and third-countries), operating rules, seconded members, needs of the team, and information exchange. Eurojust national members can take part in such teams, whether on behalf of Eurojust or as a competent national authority.

A network of JITs experts was set up in 2005. It regroups national JITs experts as well as experts from bodies such as Eurojust, Europol and OLAF. JITs experts meet on an annual basis to exchange best practices and further promote the use of JITs.

Since July 2009, JITs are eligible for direct and targeted financial support from Eurojust.

A model agreement can be used for setting up such teams. The original version of the document was adopted in 2003. It was replaced in February 2010 by an updated model agreement, based on best practices collected over the past years.

On 23 September 2009, Eurojust and Europol published the first JIT Manual. The Manual aims to inform practitioners about the legal basis and requirements for setting up a JIT and to provide advice on when a JIT can be usefully employed.

Furthermore, the Manual offers advice on how to draft the written JIT Agreement. Finally, the Manual gives an overview on EU member states' national laws implementing JITs. An updated Manual for setting up JITs was published in March 2010, now based on best practices of establishing JITs.

Besides the cooperation in JITs, one of the latest initiatives for police cooperation concerns the use of police dogs in the European Union. In March 2011, the Council adopted a resolution inviting member states to create a network of police dog professionals in Europe. The network is called KYNOPOL and aims at enhancing coordination of the activities of member states' law enforcement agencies regarding the use of police dogs.
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ERA is funded with support from the European Commission. This communication reflects the views only of the author, and the Commission cannot be held responsible for any use which may be made of the information contained therein.