Police and the EU

“Europe comes to us in all domains”
“How can Europe influence the police and vice versa?”

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European Awareness Seminar

“How Working Together by Learning Together”

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Structure

› EU relevance for international cooperation
  › operational cooperation
  › information related cooperation
  › investigation and execution related cooperation
  › European criminal policy
  › challenges

› EU domestic relevance
  › substantive and procedural criminal law
  › data protection law
  › police functioning and management
Operational cooperation

- mutual assistance in criminal matters (only labelled as ‘judicial’)
  - horizontalization
  - ‘forum regit actum’ as new principle
  - hot pursuit
  - cross-border surveillance
  - controlled deliveries
  - covert investigations
  - concept ‘joint investigation teams’ (+ cultural aspect)

- prospects for future
  - special investigative measures
  - post-trial investigative measures
Information related cooperation

- databases & notification/alert/infoex systems
  - Europol (ELO’s, EIS, AWF’s), SIS, CIS, VIS, etc
- FIU infoex
- Schengen ‘for police use only’
  - Belgium missed out opportunity
- principle of availability
  - origin: 2004 The Hague programme
  - ‘Swedish’ framework decision 2006 first step
  - followed by copying Prüm acquis onto level EU27
- data protection
  - specific regimes, generic regime (2008 framework decision),
    formal acceptance ‘informal police infoex’ (old boys networks) as
    a result of (further development) availability principle
Investigation and execution related cooperation

➤ investigation
  ➤ MLA (judicial, but!)
  ➤ seizure, search, letters rogatory etc
➤ execution
  ➤ (traffic) fines, withdrawal driving licenses
  ➤ confiscation orders – asset sharing
  ➤ disqualifications (procurement/subsidies, sex)
European criminal policy

- multi-annual planning (Tampere, The Hague, Stockholm)
- Europol (OCTA), Schengen, Frontex, etc
- intelligence-led policing
- CEPOL
- EPCTF (Cospol)
- COSI (internal security)
- crime prevention policy
- preparedness for terrorism – protection critical infrastructure
- EU crime statistics
- recent split DG JLS > DG interior (police) and DG justice & FR
- external dimension
  - ROCTA, EU-US PNR, TFTP2, EU liaison officers
Challenges (1)

- operational cooperation
  - comprehensive framework active/operational cross-border action
  - application special investigative techniques in other EU MS
  - cross-border witness protection and relocation
  - post-sentencing investigative measures (must for ENFAST)
  - development Frontex into operational EU border police force or adjudication EU-operational status to Frontex rabbits

- Europol
  - more operational, with right to evocation
  - limitation mandate to common offence components
  - regional/country-specific approach police policy vis-à-vis 3rd countries
    > establishment regional offices within EU?
  - acces to ECRIS
Challenges (2)

- police cooperation lacking behind compared to judicial cooperation
  - need for EU-US police cooperation agreement (only Europol-US) + other countries
    - compare: EU-US MLA & extradition convention
  - need for any practical tools (none now)
    - compare: EJN, fiches belges, European judicial atlas etc
  - need for radical horizontalization police information exchange
    - centralistic models/databases + national units (ENU’s, NSIS, Sirene bureaus, Interpol NCB’s, …)
    - compare: judicial cooperation almost fully horizontalized
- European pre-evidence warrant for police
  - Enhanced availability + introduction mutual recognition for police!
- incomprehensible complexity Europol structure
  - compare: Eurojust college = direction-management board-LO network
Substantive and procedural criminal law

› approximation substantive criminal law
  › minimum rules pertaining to
    › constituent elements
    › maximum sanction
    › for some offences (more coming)

› approximation procedural criminal law
  › initial lack of competence EU treaties
  › still: reluctance member states
  › post-Lisbon (QMV instead of unanimity – co-decision Council-EP)
    › road map procedural rights
      › letter of rights, right to legal assistance, including during initial
        police interrogation (Salduz), etc
    › potentially/likely: extension to (special) investigative measures
      › rationale: mutual recognition/free movement of evidence
Data protection law

- post-Libon: data protection as a subjective right
  - Article 8 EU Fundamental Rights Charter
  - Article 16 TFEU - consequences for existing instruments
    - directive 95/46 (none)
    - 2008 framework decision
      - theoretically yes: obligation to adopt new instrument
      - unenforceable, but if yes, new directive must cover
        - domestic information exchange
        - transfer own information to 3rd states
Police functioning and management

- customs
- border guarding
- police priorities and capacity issues
  - Europol right of initiative

- further roll-out mutual recognition
  - European Investigation Order
  - upcoming: further regulation non-regulated issues

- numerous challenges
  - turn ECRIS into investigation tool
  - clarification working sphere EU-domestic level
  - ...