

Rocky path to Europol

Europe's police see information-sharing as the key to controlling the traffickers, but who controls the controllers?

SECOND ONLY TO terrorism, the issue of illicit drugs has been the main rhetorical justification for increased centralisation of policing in the UK, and for increased police cooperation in Europe. The trends towards centralisation and specialisation of policing in England and Wales over the last decade have had their impact on policing practice. Together, they have coalesced into what is now referred to as 'proactive policing' – characterised by the targeting of specific criminal groups and reliance on information and intelligence gathering.

Policy makers at UK and European level have directed this proactive approach on the basis of an uncritical 'yes' answer to the following questions:

- ? Does the type and extent of cross-border crime in Europe warrant improved cooperation between law enforcement agencies?
- ? Is such crime likely to increase as a result of the reduction of border controls in the European Community?
- ? Is improved cooperation of the type envisaged likely to be effective?

Our view is that there is currently no good evidence to answer affirmatively to these questions.¹ Evidence from the Centrale Recherche Informatiedienst (CRI) in the Hague indicates that of 159 targeted groups of suspected drug traffickers, as many as 57 per cent were already operating internationally; removal of the internal borders will make little difference. If there is an increase in the drug problem post-1992, it is more likely to come from the opening up of borders in and with Eastern Europe, rather than from the abolition of the EC's internal frontiers.

Nevertheless, these are the assumptions driving the trend to increased cooperation in policing, a trend which highlights the crucial role of information gathering. In the UK the police National Drugs Intelligence Unit (NDIU) came on stream in November 1985 having evolved from the Central Drugs and Illegal Immigration Intelligence Unit formed in 1973.²

By the end of the 1980s the NDIU had

become one of a number of ad hoc intelligence databases developed by the police. These included the National Football Intelligence Unit to combat hooliganism, the National Paedophile Index, the Crime Intelligence Offices of the Regional Crime Squads, and other similar units. Arguments for integrating these in a national intelligence system started to come forward and the then Home Secretary, Douglas Hurd, signalled the go-ahead in 1989.

Drugs have been the main justification for more police cooperation in Europe

This system came into being on 1 April 1990 in the form of the UK National Criminal Intelligence System (NCIS). Consisting of five regional offices and a London base, NCIS was a new departure for

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International drugs trafficking has been the major rationale for broadening and intensifying international police cooperation and information-sharing. Britain's new National Criminal Intelligence System is planned to cooperate with similar organisations in other countries but there is concern that the structures through which this cooperation occurs are beyond direct democratic control at the European level. Data protection requirements may conflict with police needs for intelligence gathering and collation.

the British police. Its first Director General was Tony Mullet, former Chief Constable of West Mercia, and its Deputy Director was Neil Dickens, Executive Director of the UK Regional Crime Squads.

Europe pools information

Creation of the UK NCIS should not be seen in isolation from parallel policing developments in Europe. In 1989 it was Neil Dickens who was asked to prepare a report in the light of "the increasing sophistication of criminal behaviour and the likelihood that this would increase further following the relaxation of controls on movement in 1992."³

In Europe, too, the proactive trend among national police forces is clear. Such activities are aimed at preventing crime and other threats to the social order by intervening at an early stage, even before any danger or threat actually exists. In the final event, this means that the police are actively engaged in directing social processes.

Access to large amounts of information is essential for such activities. In countries such as the UK, Germany and the Netherlands, new techniques of automated data processing have played a large part in the extension of proactive policing. Many of the 'new' initiatives in police cooperation, including the Schengen Convention, reflect and at the same time legitimise this broadened need for information, making cooperation in proactive policing possible and even obligatory.

In relation to drugs, this is a field in which there has been intensive consultations since the early 1970s through the Council of Europe's Pompidou Group. However, there is general recognition that this is not a specifically European problem for which there can be European solutions. The most profitable forms of trafficking involve drug production in poor countries outside Europe for export to rich countries, including those of North America. Also the close relations between drug trafficking and organised crime make drug abuse an even

broader basis for closer international police cooperation than terrorism.

Arrangements for cooperation between European nations exist at a number of levels – bilateral, multilateral, and international (see diagram). In particular, debate has been engaged around three initiatives concerning the policing of Europe as a whole. These are: the **TREVI Group** discussions; the coalition of countries signing the **Schengen Convention**; and developments within the International Criminal Police Organisation, better known as **Interpol** (see panels overleaf for details).

Common to these three European developments, and to the UK's National Criminal Intelligence System, is the pre-eminence given to intelligence and information sharing. Terrorism and drug trafficking are among the spectres driving these police initiatives; information and intelligence are seen as the key to defeating them.

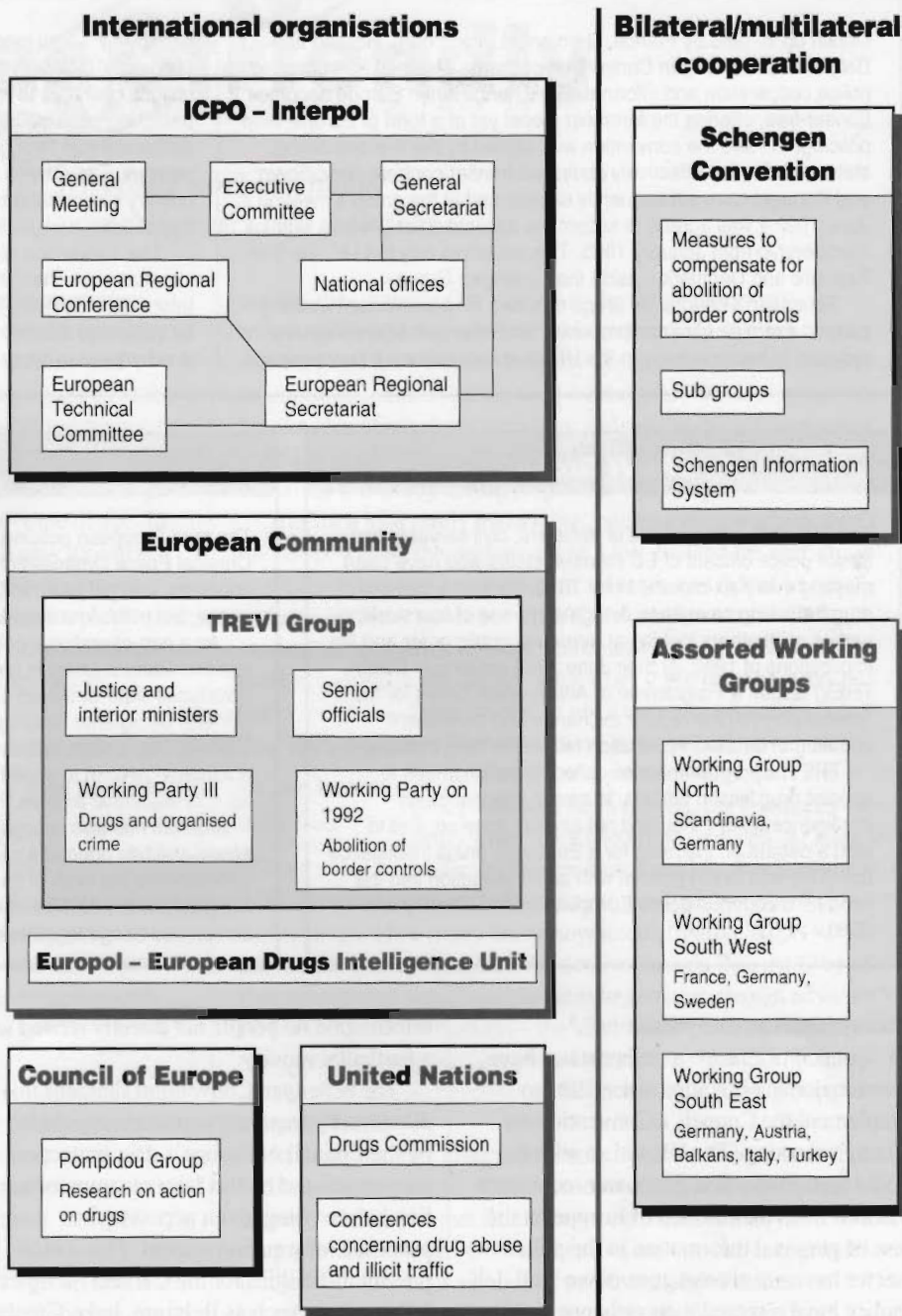
Groups like TREVI and the Schengen Convention countries have been criticised for pursuing this politically sensitive strategy seemingly with no democratic oversight. The European Commission accepts that policing falls outside its 'competence' to rule on and the consequent lack of accountability has arguably given the police and others a free hand. Expressing its frustration in December 1989, the European Parliament called the TREVI Group discussions a violation of international conventions and democratic principles.

Obstacles to cooperation

In practice the discussions and developments in Euro-policing have not been quite so free of political hindrance. Different countries have held to different lines and within their respective police services, different approaches have been taken. Holland, for example, has long been noted as a country with unusually liberal attitudes toward some forms of drug use. The former head of the UK's National Drugs Intelligence Unit, Barry Price, has expressed some of the dilemmas: "I'm a strong advocate of a European system, but I have got to say, there are some people in Europe who are not so keen – they don't see the need quite as clearly as I do".⁴

The TREVI Group's discussions on the need for a European Information System were put on the political agenda at the Maastricht European Council Meeting in December 1991, which drew up the draft Treaty on European Political Union. This included a commitment to proceed with the

The structure of European drug policing



system and coined the term 'Europol' to describe the new venture. One of the first steps was to be a European Drugs Intelligence Unit becoming operational by early 1993.

Since last December the Danes have rejected the treaty and across Europe there is a decided impression that feet are getting cold over a number of its provisions. The Germans, for example, want Europol to develop into a fully-fledged investigative body with powers of arrest in any country, while the British are happier with a Europol that simply exchanges information – a role that would mesh neatly with that of our own new National Criminal Intelligence System.⁵

Data protection

A further obstacle to information sharing is, as some police services see it, the overarching question of data protection conventions and laws. These operate within countries and also on a supra-national scale to regulate trans-border data flows. Creation of international databases would appear to necessitate equivalent data protection provisions, but from the police point of view these would present an obstacle to 'effective policing'. Roger Birch, chair of the chief constables' International Committee, states that "the policing of Europe cannot wait for the total harmonisation of legislation and for the resolution of such

The Schengen Convention

Drawn up in 1985 by France, Germany, Luxembourg, Holland and Belgium, the Schengen Convention concerns the need for enhanced police cooperation and information exchange when Europe becomes frontier-free, offering the foremost model yet of a form of Europe-wide policing. In 1990 the convention was signed by the five originating states, which also effectively abolished frontier controls. Italy, Spain and Portugal have subsequently signed, and at the group's meeting in June 1992 it was agreed to accept the application of Greece, with full membership from January 1993. This will leave only the UK, the Irish Republic and Denmark outside the Schengen Group.

Schengen's chapter on drugs provides for a permanent working party to examine common problems. All Schengen signatories are required to become party to the UN drug conventions if they were not

already so. Legal measures against drug trafficking are made obligatory, including the confiscation of financial profits. Article 73 obliges countries to make investigation and detection of illegal drug trafficking possible by means of "monitored" deliveries - drugs deliberately let through the net and tracked to expose the trafficking network. The proviso that this should be in accordance with each country's constitution and law is a veiled recognition of the problems this poses.

The convention also proposes the establishment of a pan-European information exchange system among police forces - the Schengen Information System. This would not exchange intelligence and would be subject to Council of Europe and other data protection provisions. It is scheduled to come on line in April 1993.

TREVI Group

The TREVI Group consists of ministers, civil servants and senior police officers of EC member states who have been meeting every six months since 1976. Serious crime and drug trafficking have been delegated to one of four working parties, with others looking at terrorism, public order and the implications of 1992. At their June 1990 meeting in Dublin, TREVI issued a *Programme of Action* which called for the "intensifying [of] the regular exchange and permanent updating of detailed information relating to drug trafficking".

TREVI's programme also called for police forces to appoint drug liaison officers, to create national drugs intelligence units if they had not already done so, and to start a debate on the need for a European drugs intelligence unit. This was to run parallel with an investigation into the need for a common police European Information System (EIS).

Interpol

The third European policing initiative has been made by the International Criminal Police Organisation, Interpol, a global organisation with 160 member countries. Interpol has traditionally suffered from a rather pedestrian 1950s image, but in the last decade has made strides to update itself.

As a non-operational police force, Interpol has only ever been a communications channel for police information and intelligence. In 1987, it introduced state-of-the-art computer and communications systems into its new General Secretariat buildings in Lyon. Central to this development was its new Criminal Information System which includes a drug seizures database and an automated system to speed retrieval of images, photographs, fingerprints, etc, from its electronic archive.¹⁰

Interpol has also recognised that some 80 per cent of its work is Europe-based and has opened a new European Secretariat working from its Lyon HQ to coordinate the work of its European national offices. The UK office is to be integrated within NCIS and is based at New Scotland Yard. An annual conference brings together delegates from all European national offices.

thorny issues as data protection".⁶

Council of Europe member states have been under an obligation since 1981 to implement the Council's Convention on Data Processing. The UK did so with the 1984 Data Protection Act. Later recommendations from the Council of Europe on the use of personal information in the police sector have not always gone down well. UK police have reserved their right not to fully implement a critical recommendation on giving people notice that information is held on them and on the accumulation of

information on people not directly related to a particular inquiry.⁷

The Schengen Convention sharpens this dilemma by requiring signatories to abide by the Council of Europe's data protection convention and by this later recommendation before being given access to the proposed information system. This would present difficulties for the UK and for other EC members such as Belgium, Italy, Greece and Spain, which have yet to enact legislation on data protection. A more hopeful approach to protecting sensitive information is the current EC draft Directive on Data Protection. Unfortunately, it is unclear whether this will extend to the police sector.

Employment vetting

While we have set out the formal arrangements for greater police cooperation, it must be remembered that this terrain is constantly shifting; the stresses and strains of moving towards a Europeanised police force are beginning to surface. Differences in forms of accountability, conflicts between law enforcement agencies in terms of remit and powers, and data protection regulations, are

causing the terrain to be increasingly contested. Add to this, say, the issues of public order policing, different judicial systems or police complaints systems, and the picture rapidly loses any clarity.

In the short term we may expect European police forces each to come up with a central facility capable of dealing directly with another state. The National Criminal Intelligence System will aim to do this for the UK.

Of course, police intelligence and information also has its uses *outside* the criminal justice system, in particular for vetting job applicants. Local authorities in the UK now vet hundreds of thousands of people every year using police-held information on would-be teachers, social workers and others, overtly in the interests of child protection.⁸ In this context employers see drug misuse as a 'problematic' offence but are not consistent in how they respond to applicants with a drug-related conviction.⁹ No one has yet undertaken research to look at the release by police forces of criminal records at a European level. ■

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9. Association of Metropolitan Authorities. *Education Circular*: 90/15.

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