Policing the New Europe-The Information Deficit

Amanda Hoey

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AMANDA HOEY and IVAN TOPPING

ABSTRACT   *The European police terrain comprises a jigsaw of different police forces, judicial systems and information networks. Throughout Europe police need information in order to do their job. Police detect very little crime themselves but rely heavily on information from the public about the commission of crimes. Also, in order to plan operations, surveillance or identify likely suspects in a criminal investigation they will need information such as geographic details, physical descriptions and the like. Technology can be used to enhance the operational effectiveness of police forces by firstly, allowing vast amounts of information to be stored in readily accessible form, secondly, enabling the police to deploy resources efficiently and finally, by aiding police forces in large scale preservation of law and order. This article explores the extent to which the European policing environment is being altered and contends that, as a result of demands for increasingly sophisticated information and communication links, the pace of technological development will have a direct impact on the nature of policing in the 'New Europe'.*

Introduction

In the context of the new Europe, the exchange of security-related information will play a crucial role in police co-operation and law enforcement. In many ways, computerised communication, information storage and exchange have come to be seen as being at the core of measures designed to counteract the 'security deficit' in the new Europe.[1] This article seeks to highlight some of the difficulties involved in the daily routine of information exchange which does or will take place under the aegis of co-operative European policing structures. This will be done through an analysis of existing mechanisms for police co-operation and their effectiveness, coupled with an exploration of the extent to which 'informatization' will, at a European level, affect both the support for the core functions of policing and the practice of policing. The further issue of legal and practical problems connected with the harmonisation and integration of European security systems and information technology will be addressed.

Correspondence: Amanda Hoey and Ivan Topping, School of Public Policy, Economics & Law, University of Ulster at Jordanstown, Newtownabbey, Co. Antrim, UK; e-mail < A.Hoey@ulst.ac.uk > and < I.Topping@ulst.ac.uk > .

The European Context

In the European context, 'crime' is taken to encompass a diverse range of criminal activities. Commonly, references occur to such matters as terrorism, drugs trafficking and money laundering. In spite of the trans-national nature of international crime, the fight against such forms of criminality has traditionally been state based or conducted via international structures for co-operation constructed on an *ad hoc* or temporary basis. During the post second world war and Cold War periods, the issue of international crime was not highly rated on the political agenda but a series of terrorist attacks in Europe, the Middle East and the US during the 1970s and 1980s provided the impetus for enhanced co-operation between the European states and convinced them of the need for a more permanent and structured form of international co-operation. In particular, issues such as drug trafficking and money laundering were increasingly viewed as international problems which, as such, could only be effectively tackled at that level. The two mechanisms traditionally associated with combating international crime are bilateral agreements between two nations and the setting-up of multi-national organisations by participating states. It has been asserted that these 'traditional methods of international crime control are being rendered ineffective by the evolution of the European Union (EU) away from the state system'.[2]

European Police Co-operation—Major Structures

Since the 1970s, police co-operation and law enforcement in Europe, as elsewhere in the international community, was conducted largely on a reactive and non-permanent basis, with European security initiatives tending to fall somewhere between national and global levels of security co-operation. With the creation of the Single European Market, in which, ideally, all physical and fiscal barriers have been removed, there have been and continue to be obvious ramifications for policing Europe and for European security structures. Ratification of the Treaty on European Union (TEU) marked the beginning of a new stage in process of European integration, with the third pillar of the TEU being concerned with European-wide co-operation on justice and home affairs. In particular, the provisions of Title VI (Article K) of the TEU have had a significant impact on law enforcement and police co-operation in Europe.

   Within the European State, law and order are becoming issues calling for increased attention. Traditionally, policing activities have been located within each member state but change has occurred with the development of non-state forms of policing at supra-state level within the EU. In particular, steps towards a common security structure have been strengthened through the creation of two devices to achieve commonality and co-operation in European policing—the signing of an agreement for a co-operative European regional police venture (based to a degree on Interpol), known as Europol,[3] and the earlier attempt to create an internally borderless Europe through the Schengen Agreement.[4]

Europol

Although the UK ratified the creation of Europol in December 1996, it could not be described as enthusiastic about further extending its remit, taking the view that a fully operational cross-border police force is neither necessary nor desirable. The UK perception is that Europol will simply exist as a complement to Interpol and should focus on serious

international crime within a more closely defined geographical area, having a capacity to develop and analyse intelligence.

The 1995 Europol Convention set out those areas in which Europol would be involved—drugs trafficking, trade in human beings, motor vehicle crime, money laundering, and trafficking in nuclear and radioactive substances. Somewhat surprisingly, terrorism is not currently on this list, but is expected to be added in the near future.

One of the key differences between Europol and its forerunners lies in the fact that Europol has a legislative mandate. In this sense, it is embedded within the existing constitutional structure of the Union. As one commentator has put it, Europol 'is built into the masonry of the Third Pillar of Justice and Home Affairs policy, which, alongside the First Pillar of the original EEC and the Second Pillar of a common foreign and security policy, supports the entire legal edifice of the European Union'.[5]

Schengen—the new tensions

However, inevitably, these latest developments have created tensions between the newer Europol security structures and longer established attempts at European security co-operation. In particular, the Schengen Agreement has generated comment and criticism. This Agreement was originally drawn up in 1985, and purports to operate a borderless Europe in a block of nine European countries, the internal borders of which are contiguous. This is an ideal to which Europe has long aspired, but the practicalities of implementation have meant that the Agreement—although ratified by the signatories in 1995—is still some way from achieving the ideal of a fully borderless Europe.

Most strikingly, unlike the majority of EU states that have signed the Schengen Agreement, the UK and Ireland remain outside the Schengen community and are not members. They take the view that free movement of citizens within the EU area—one of the four main elements of the internal market as laid down by the Single European Act of 1987—should be possible only for EU nationals, but not for non-EU nationals. This stance would obviously require a two-tier system of movement control to deal with EU and non-EU nationals travelling across frontiers within the Schengen area, which is not currently the case. It is on this interpretation of their EU treaty obligations that the maintenance of UK and Irish border controls is based, causing these two EU member countries to be out of line with their colleagues and at variance with the Schengen ideal.

The reality is that although border controls continue to operate at external Schengen frontiers, travel inside the Schengen group of countries is not, in the main, subject to the degree of restriction or check that was once the case. Greece, together with the Scandinavian group of Denmark, Sweden and Finland, are likely future participants in the Schengen ideal, although obviously their frontiers are not in some cases directly contiguous with the frontiers of the other Schengen signatories.

One of the positive aspects of the Schengen Agreement has been the initiation of joint European security operations directed against organised crime, illegal immigrants and drugs, and while the Schengen-driven process of security co-operation at national level does not on the surface include the UK, the Prime Minister in fact negotiated the right to opt into the European system at the Amsterdam Summit in June 1997. So, in effect, the UK national system is attempting to keep a foot in both camps by buying into and co-operating with the Schengen system. The effect is to attempt to extract the maximum benefit from Schengen but without at the same time relinquishing the right to continue to operate external border controls with Europe. This willingness for involvement in European

security matters has the obvious merit of showing a wish to co-operate with European partners—sometimes seen to be lacking in other areas—and the consequent implications for the UK's relationship with Europol.

Current Difficulties

Unfortunately, the idealism of implementing Schengen in Europe has coincided with a number of major political, social and economic upheavals. These include the ending of the Cold War in Europe, the opening of borders with those central and eastern European states which had previously been sealed, increasing lawlessness and the collapse of the soviet-bloc economies. This in turn has led to increasing problems with drug trafficking, organised crime and movements of economic and, indeed, political migrants from these areas. Until recently, Schengen has managed both conceptually and practically to survive this difficult period. One of the key factors in the continued survival and stability of Schengen has been due to the full use made of the Schengen Information Service (SIS). This is a database containing many different categorisations of information—such as descriptions of people and objects missing or wanted in the Schengen countries—which can be accessed at any time by police or customs; but in recent months, the system has become in danger of simply being overwhelmed. For example, the latest waves of largely economic refugees from Albania and from Kurdish areas in the Middle East who are entering Europe via Italy are threatening the very existence of Schengen and causing sharp political differences between Italy, as the country of entry, and its Schengen neighbours, particularly France and Germany. Essentially, the Schengen ideal is being tested and found wanting due to the policing and border-control problems caused by Italy's long external coastline and, of course, its liberal asylum laws.

A Borderless Europe and Security Co-operation

At the European level, we have witnessed the development of a 'borderless Europe', in which it is asserted that crime will know no boundaries and national police forces will lack the necessary control to maintain law and order. The implications of a 'Europe without Frontiers' are manifold. For our purposes, two implications are particularly significant. First, there appears to be a general perception that in a borderless Europe, crime control will simply be more difficult and, consequently, crime will rise.[6] For example, in the official German police criminal statistical analysis for 1993, it was claimed that 'the increased permeability of Europe's internal borders' was one factor for increased crime rates.[7] This obviously raises the issue of just how symbolic borders within the New Europe actually are.[8]

Second, there are significant implications for communications and information technology. One of the main objectives of the European Union's common foreign and security policy is to 'strengthen the security of the Union and its Member States in all ways'. In line with the objectives of the TEU, we have witnessed the development of European-based groups that are crucial to the emerging security structure of the new Europe, but in spite of this, state sovereignty is still maintained in the criminal justice field. Member states have been reluctant to cede sovereignty and instead have opted for enhanced co-operation and information exchange as a means of strengthening European security. As police officers do not have operational powers within another country, the emphasis falls 'on the exchange of police information between forces as being the bedrock of co-operation'.[9] Technological

development has paved the way for advanced systems of police co-operation throughout Europe. In fact, the widespread proliferation of computerised databases has led to assertions that 'there are almost as many proposed or recently established international information systems as there are international police agencies'.[10]

Good communications are a necessary precondition for efficient and effective police co-operation. As has been observed 'it is clear that police computerisation and the collection, storage and use of personal information has its own separate trajectory'.[11] It appears that this 'informatization' of police work may have a role to play in predicting the developing role of policing the new Europe. The extent to which the boundaries of the previously clearly defined security systems have become redrawn is obviously a matter of great concern. This must cause scrutiny of the way in which the combined effect of information technology and the process of informatization has contributed to the redrawing of boundaries and new initiatives in trans-national forms of police co-operation.

Communications and Information Exchange

Information is identified as a resource that has been facilitated by computerisation. In policing the 'New Europe', it is contended that the demand for increasingly sophisticated information and communication links coupled with the pace of technological development will alter the environment in which policing is conducted. Traditional methods of policing will no longer be capable of adequately preventing crime and maintaining law and order. As European security jurisdiction evolves and redraws the existing boundaries, there will be an enhanced need for reliable high-grade information on an increasing scale.

Current Information Exchange Systems

As already mentioned, practical police co-operation leaves existing national police powers untouched. Co-operation may encompass several areas such as training, observation and information exchange. For our purposes, the latter is the most significant. The current information exchange system comprises both international and national structures, as well as specific trans-national structures. The most formalised structures comprise, at the international level, INTERPOL, the multilateral crime-fighting organisation; nationally, we have special law enforcement units and at the European level there is Schengen and Europol. This section looks at the role of each of these agencies and the extent to which information technology assists in the policing functions of these organisations.

Interpol

Interpol is essentially a global police information and intelligence exchange system. Interpol does not conduct criminal investigations itself but, rather, national police forces can conduct international investigations *through* Interpol. Currently, over one million messages are transmitted through the Interpol network each year and it is estimated that almost half of Interpol's work relates to Europe.[12] The communication structure is three-fold, comprising a central station, regional stations and national stations. The core function of Interpol is to provide information to national police forces in the form of 'international notices'. There are five of these notices (see Table 1) which contain information relating to physical descriptors of individuals, the types of crimes that individual is suspected of having committed, photographs, fingerprints and details of criminal records.

Table 1. Table of international notices

Wanted (red)	Request for the arrest of an individual for extradition
Enquiry (blue)	Request for information concerning a named individual; for example, previous conviction, details of movements, etc.
Warning (green)	Alerts other police forces about individuals
Missing person (yellow)	Provides details of missing persons
Unidentified body (black)	Contains physical description of individuals and any other relevant details

Interpol has been subject to much criticism on the basis that it is excessively bureaucratic, the procedure for requests is cumbersome and slow, and security appears to be somewhat lacking.[13] Despite this poor image, Interpol has achieved pre-eminence in international policing circles and, since 1987, the implementation of an extensive computerisation programme has meant a major overhaul for the organisation. Its present Criminal Information System (CIS) was introduced in 1987 in order to:

- improve methods of storing and retrieving information on crimes and criminals
- speed up replies to NCB inquiries
- give the Interpol Police Division immediate, direct access to the computerised files[14]

The CIS includes files on names, drug seizures, counterfeit currency and property. Other developments such as the Electronic Archive System and an Automated Search Facility have led commentators to conclude that Interpol now has 'one of the most sophisticated automated search and image transmission systems in the world. It enables rapid, reliable and secure information exchange of information. NCB's will have access to an enormous store of data ... the idea that Interpol is just a "letter-box" is clearly out of date.'[15]It appears that Interpol will no longer be content to act merely as a clearing house for information, and the development of the Analytical Criminal Intelligence Unit (ACIU) implies that Interpol intends to stay at the fore of enhancing international police co-operation.

Schengen Information System

Schengen may be regarded as the most complete system of police co-operation in Europe. The rationale behind Schengen is to strengthen collaboration between Member states. In order to do this, there is a need for comprehensive exchange of information and thus was born the SIS. The SIS does not link systems (as does Interpol), rather this is a completely new register based in Strasbourg which comprises information held on a central databank drawn from national files on crimes and criminals. Schengen is unique in the sense that, for the first time, we have a detailed Convention (comprising some 143 articles) providing rules on the use of a computerised information system with integral data-protection provisions.

The purpose of the SIS is to maintain public order and security, and for use in connection with the movement of persons (Article 93). The system comprises six categories of data file with entries on:

- persons who are wanted for arrest for extradition purposes
- aliens (i.e. non-EU citizens)
- missing persons

- persons under covert surveillance
- objects sought for the purposes of seizure

Generally, the information held on the SIS is to be used only by authorities responsible for border checks and other police and customs checks carried out within the member state, and the co-ordination of such checks. Each country has its own national database referred to as SIRENES (Supplementary Information Request at the National Entries) which is linked to Strasbourg. Each one follows a similar format and an information report on an individual by national police can only contain the following information:

- name
- physical descriptors
- date and place of birth
- sex
- nationality
- whether armed
- whether violent
- reason for the report
- action to be taken

Collection of information on individuals' racial origin, religious beliefs, sexual behaviour and membership of organisations is prohibited under the terms of the Convention. The convention also sets 'default' levels of data protection, to the extent that member states must have levels of data protection equivalent to those contained in the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and the Council of Europe Recommendation (97)15 Regulating the Use of Personal Data in the Police Sector. Information may also only be used for the purpose it was gathered and individuals have a right to access information held on them (Article 109). This right of access is constrained by the fact that it must be done in accordance with the national law of the state in which it is requested. Also, the reporting state has the right to contest the matter. There is no mention of how this legal challenge is to work and how any differences between requesting and reporting states should be resolved. The right of access is balanced against protecting the rights of others and covert surveillance. If an individual find out that inaccurate data is held on him then he has the right to have it deleted. Thus, for example, if a French court rules that an SIS report recorded by the Italian authorities is unlawful, then such a report must be deleted. However, the Convention does not provide for a direct remedy to be available at either national or supranational level.

The UK has consistently refused to become a signatory to the Convention but, recently, backing has been given for European initiatives to crack down cross-border crime and is set to contribute to the SIS.

Europol

Europol has been likened to a pan-European FBI which 'represents the most ambitious plan yet conceived for an independent policing capacity at EU level'.[16] Unlike Interpol, which has been condemned many times as nothing more than an international letterbox, Europol's remit is to provide a system of information exchange which is designed to combat and prevent organised crime in Europe.

Drugs trafficking and related crime in particular, as one of the original listed areas, has been accorded the highest priority, with a Europol Drugs Unit (EDU) having been set up as early as 1993, in the period prior to the actual ratification of the creation of Europol. The EDU is now incorporated within the Europol structure, and is a non-operational unit concerned primarily with the exchange of information and intelligence. Unlike the other systems, the EDU holds 'soft' information which may include innuendo or unverifiable facts.

EDU has recently been asked to run several projects concerned with illegal immigration networks. As Lewis points out 'the EU is faced with mass immigration from a potential 700 million people in Eastern Europe, the former Soviet Union and Western Asia'. This phenomenon of mass immigration has been caused by a variety of factors, such as the collapse of state structures in the former USSR, recessions in countries bordering on the EU and the opening up of formerly sealed borders. So, whereas official immigration channels into Europe have largely been closed off, such channels have now been replaced by illegal immigration networks. Immigration is a sensitive issue on the political agenda, and increasingly has been recognised as something that should be dealt with on a co-operative basis. Europol is a relatively recent development and it will be interesting to see how it works in practice. The UK has taken a leading role in this new agency and was the first member state to achieve the setting up of a National Criminal Intelligence Service (NCIS) through which contact with Europol takes place. As the NCIS Director General Albert Pacey pointed out, 'Europol offers UK law enforcement another avenue through which to pursue international criminals who do not stop at national borders in their pursuit of profit'.

Informatization: pros and cons

Technology can be used in order to enhance the operational effectiveness of the police by allowing vast amounts of information to be stored in readily accessible form, enabling the police to deploy resources efficiently and, finally, by aiding the police in large-scale preservation of law and order. In the new Europe, information technology acts as a facilitator in adjusting the shape of the internal security field. The implications of this are manifold and problems such as accountability, privacy and security of information arise.

Changes in European policing and security issues will necessarily impact on the UK and traditional methods of policing. The increased demand for information and communication links may lead to increased information-based police work compared with the traditional concerns of the member states' police forces, not least the UK. There is an implication that this process of 'informatization' will alter the tactical context of information and is likely to structure further harmonisation and integration of existing security systems.

The process of 'informatization' brings with it concurrent legal and practical problems which need to be addressed. The practical problems include secure networks, communication standards, co-operation in major international investigations and contingency planning. The legal problems include the governance of systems for information exchange, with a particular emphasis on data-protection regulations.[17]

The computerised databases which have been discussed in this paper represent powerful instruments of control, which, it is asserted are required to combat the 'external threats' facing the new Europe. While many may applaud such systems, it is imperative to realise that the risk of abuse increases dramatically, the more dense the links become. Commenta-

tors have identified several problems associated with the abuse of computerised information storage and exchange systems. These problems can be summarised as follows.

- *False information can be more widely disseminated.* There have been various reports of inaccurate information exchange; for example, the incident of Mr Williams (not his real name) who, while on a football trip to Belgium, was branded a football hooligan, held for over 16 hours, strip searched and photographed. This action by the Belgium police was instigated on the basis of inaccurate information relayed to the NCIS (relating to an incident in 1990 of disorderly behaviour in which Mr Williams had not been involved) which was then sent back to the Belgium authorities at the time of the second incident in 1992. On his return to the UK, Mr Williams submitted a Data Protection Subject Access Request regarding the information held by the NCIS. This request identified the fact that inaccurate information had been recorded, which ultimately led to an infringement of Mr Williams' privacy and individual rights.[18]
- *Subject access to the information held on the systems is restricted.* This is largely due to the confidentiality of the systems and variations in national data-protection laws. In this context, member states may be able to derogate from subject access requests on the grounds of national security, crime prevention and public safety.[19] Discrepancies between Member states' data-protection regimes or even the lack of data-protection provisions also gives rise to concern. The need for a specific European data-protection regime has been recognised in the form of the EU Directive on Data Protection[20] with an implementation date of October 1998 but, again, similar derogations apply.
- *'Informatization' may lead to increased objectivity.* The danger is that when bare information is relayed trans-nationally via computer terminals, the receiver of that information may act objectively without consideration of the wider operational context relating to the collection of such information, which many would argue is crucial for competent interpretation.
- *Lack of democratic accountability and legislative mandate.* From where do these systems derive their legitimacy? If we accept that one means of determining the legitimacy of the communication systems is by way of a legislative mandate and democratic accountability, then we need to examine the current structure in order to assess whether or not this exists. Within the remit of the European institutions, policing has no legislative mandate; for example, Interpol stands alone for its lack of statutory legitimacy. Trevi (the forerunner to Europol) operated without the EC Treaty framework. The Schengen treaties are international agreements over which the European Court of Justice has no jurisdiction. Interpol and Schengen lack accountability to a separate agency, and while Europol operates under a sophisticated regulatory framework, if it were, in the long-term, to 'acquire operational powers ... what would be required as well as a detailed set of procedural rights would be a special complaints process and tribunal through which such rights could effectively be vindicated'.[21] Democratic accountability is necessary to ensure against complacency and the current opaqueness of the internal decision-making process. It also secures the legitimacy of the systems and overcomes suspicion between Member states.

Conclusion

In assessing the effectiveness of current European policing mechanisms, several difficulties become apparent. First, the nature and extent of organised crime is largely unknown or not

agreed upon. Second, European policing comprises a myriad of initiatives with little empirical data on which to assess the performance of these initiatives. Finally, there appears to be no clear statement of the EU police function at supranational level, despite the need to take into account the fusion of national and cross-national factors.

However, it would appear that there is a general consensus that there is clearly a need for an effective system of European police co-operation. Now that 'justice and home affairs' is firmly embedded as the third pillar of the EU, it is contended that European law enforcement will be at the very heart of the process of European integration. The implications of a European police state will necessarily comprise growing internal surveillance and increased cross-border exchange of information. In this context, the 'hard end of crime control gives way to ensuring access, storage and retrieval of knowledge'.[22] Computers in European policing will thus continue to expand for various reasons.

On a political level, it has been recognised that technology acts as a facilitator in achieving the goal of enhanced information exchange. The co-ordination of information is seen as vital for the security of the EU as the nature of police tasks change. In a borderless Europe, increased terrorism, drug trafficking and illegal immigration are factors that have to be dealt with. The spontaneous security structures that have attempted to address these problems, such as Schengen and Europol, rely predominantly on data collection, retrieval and analysis of information.

Policing lies at the heart of any order and thus security matters will be paramount on a European level. A European police state would necessarily require rapidly communicated, secure accessible information and, in this context, it is contended that information technology will have a pivotal role to play in the practice of policing the new Europe as security jurisdiction changes and evolves.

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15 Benyan *et al.*, *op. cit.*, p 226.

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