

Policing in Europe: An Ethnographic Approach to Understanding the Nature of Cooperation and the Gap between Policy and Practice

Laure Guille
University of Leicester

Abstract

Over the last two decades, there have been significant developments concerning transnational police and judicial cooperation, with the creation of relatively new tools of cooperation such as the European Judicial Network, the Centres for Police and Customs Cooperation, Europol and Eurojust. However, cooperation at the level of negotiations means nothing if these structures, agencies and networks are not appropriately translated into practice in the field. Therefore, this article aims to explore the gap between policies agreed at a macro-level and the work undertaken in practice within the context of police and judicial cooperation in Europe. In particular, it will examine a variety of factors arising from the empirical research undertaken in four European countries and relevant institutions, which comprise of, amongst others, the political priorities and influence and the need to adapt the law to practice.

Keywords

Europol; Police and judicial cooperation; Eurojust; Centres for Police and Customs Cooperation; European Union

THE THEMES OF POLICE AND JUSTICE HAVE ALWAYS BEEN A SOURCE OF ANIMATED discussion and debate whether they involve the public, academics, practitioners or politicians. Over the last two decades, there have been significant developments concerning transnational police and justice cooperation. This has been given an extra lift after the 9/11 attacks of 2001, along with the more recent bombings in Madrid in 2004 and London in 2005. These events have allowed many initiatives, which had previously encountered many difficulties in their development because of legal challenges, to see the light and be implemented in practice. Some striking examples of the progress made are Europol, the European Judicial Network (EJN) and Eurojust. However, the creation and development of new agencies, agreements and structures at a European level have received inadequate empirical attention. Indeed, the body of academic work on police and judicial cooperation in Europe is mostly descriptive, dealing with emerging legislation and/or organisational structures, or considering policing studies that deal with one national structure, but with little empirical evidence underpinning it. Consequently, this article aims to provide an on-the-ground assessment of the situation of European police and judicial cooperation in order to allow better awareness for future developments at national and global level.

Guille, L. (2010). 'Policing in Europe: An Ethnographic Approach to Understanding the Nature of Cooperation and the Gap between Policy and Practice', *Journal of Contemporary European Research*. Volume 6, Issue 2, pp. 257-271.
Available at: <http://www.jcer.net/ojs/index.php/jcer/article/view/192/208>

The findings presented in this article are part of a more comprehensive ethnographic study¹, which focuses on the current levels and efficiency of instruments of cooperation at bilateral and multilateral level, so that the European puzzle can be completed as fully as possible. The functional and operational interconnection of the various institutions and practitioners involved in police and judicial cooperation were studied in France, Luxembourg, Spain and the United Kingdom, and in two border areas, the French-Spanish Catalan border and the Anglo-French border at Folkestone. The selection of these cases has allowed for an analysis of the levels of involvement in matters of cooperation, the resources made available and the divergent priorities at political level from the point of view of a variety of legal systems and countries. Furthermore, as the relatively new tools of cooperation - namely the European Judicial Network (EJN), the Centres for Police and Customs Cooperation (CPCCs), Europol and Eurojust - affect in one way or another the national work of police and justice, comparisons in the implementation and use of these new tools in the different countries is another point worth of investigation. If practitioners lack information on the various instruments available for cooperation, and if governments do not provide 'translation' in the field of the initiatives adopted at macro-level, cooperation cannot be fully achieved.

The aim of this ethnographic approach is to provide an in-depth study of the situation in practice, facilitating the examination and close-up view of the actions of the groups and institutions studied, as well as "to witness backstage behaviour" (Punch 1979: 18). Face-to-face interviews² with police officers, civil servants, prosecutors and liaison magistrates from the various countries studied, members of Europol and Eurojust, as well as officials from the Council of the European Union have been conducted alongside periods of observation (such as at border areas and in CPCCs) and internships³ undertaken at relevant institutions (such as Europol and the Council of the Judiciary in Madrid), many of which have never been studied in this way before.

This article offers findings on the existing identified gaps and the impact that they can have on practices and cooperation. Furthermore, it will show that the gap between policies/decisions agreed at the macro-level and the work undertaken in practice is very wide. It is worth emphasising that the study and systems/instruments will be described at the point the relevant empirical work was undertaken, taking into account that the interviews started in December 2002 and ended in June 2006, with the observations also taking place between these dates. It is important that the description and analysis of the legal instruments and the legal basis of the institutions should be in line with the empirical work in order for the study to be relevant and provide an overall picture of the situation. Hence, legal initiatives mentioned in this article relate to the situation as in 2006, whilst more recent changes are not addressed in detail. However, where possible, relevant updates have been provided as there have been significant developments since the work was concluded, especially the ratification of the Lisbon Treaty.

At what level does cooperation occur?

In order to categorise the various levels of police cooperation, this article will use the framework proposed by Benyon (1996), which identifies three different levels, the macro-, meso- and micro-levels. From one end to the other, the micro-level mainly involves

¹ See Guille (2009) for the complete study and findings.

² The interviews were undertaken between 2002 and 2006. Further update information was given by telephone, at conferences and by e-mail until October 2008. The total number of formal interviews undertaken amounts to 87, to which must be added the numerous informal discussions, phone conversations, informal discussions at conferences and, most importantly, invaluable informal discussions during fieldwork and during the observations.

³ The various observations and internships undertaken began in August 2003 and ended in August 2005.

practitioners in the field at the 'lower' end, whilst the macro-level, located at the 'top' end, refers to the political level and constitutional matters. In-between these two levels, we can find the meso-level, which includes for example operational procedures and structures such as Europol, Schengen and networks of liaison officers. These three levels can all overlap and are interrelated, with the meso-level being a key stage in enabling interaction between the political aspects and the practitioners in the field (Guille 2010b).

Nogala (2001: 142) states that "cooperation has become a buzz-word" in the policing field. However, there is often little consideration as to the type of cooperation that is being considered - cooperation at macro-, meso- or micro-level? Cooperation at the level of legal negotiations means nothing without the day-to-day work of officers in the field. Therefore, these three levels need to be taken into account and it is necessary to examine how they inter-relate. This is also the rationale of the study on an empirical basis, in being able to highlight gaps between theory (macro-level) and practice (meso- and micro-levels), which is another theme running through the research as a whole. In their study more than a decade ago, Anderson *et al.* (1995: 2) found that "political considerations are bound to differ from practical operational police concerns", but the situation seems to have remained the same, with little having been done to fill the gap. At the moment, the gap between the "governmental bureaucracy" (Gallagher 1998: 119) and practical and operational needs is seen as becoming increasingly wide. In consequence, practitioners prefer to choose the difficulties involved in overcoming cultural, linguistic and procedural differences and make direct contacts with colleagues, and in doing so adapting the law to practice. We must address the obstacles that hinder cooperation and more importantly question the needs of police and justice cooperation in practice.

On the one hand, there are tools such as Europol with many guidelines and rules, whereas, on the other hand, there are instruments such as Schengen (and the Schengen Information System (SIS)), the CPCCs and the liaison magistrates about which little is written. Why do we have some tools that have a complicated structure, but malfunction with regard to cooperation, and other tools that have less legislation, but work much better? It is partly related to the needs that are required in the field versus the priorities at a formal level, which do not always correspond to these needs.

It is not always the instruments that contain the most rules or have the highest political support that are the most popular and useful. For example, Schengen has been identified by all interviewees as the tool most often used by police officers. Interestingly, there has always been a SIRENE manual⁴ on how to use the Schengen Information System, but the many officers interviewed working in SIRENE offices across the various countries did not seem to be aware of its existence. Indeed, Schengen was always seen as having no written guide or regulation as to its use, without undermining its good function and use. Furthermore, a link could also be made with the adaptation of the texts and needs in the field, which is a point specifically emphasised when referring to the CPCCs below. Indeed, texts are being signed, but do not correspond to the needs in the field. As a result, law enforcement officers have to adapt them to what is required for action. On the other hand, in the liaison magistrates' case, there are agreements that are laid down on paper, such as those concerning the bilateral exchange of liaison magistrates. However, no specific regulation is given for their operation, which leads, as in the previous case, the practitioners to adapt the available tool to their needs with the difference being in that case that the liaison magistrates have to act in a 'blurred' framework as the agreement does not provide any details on how the liaison magistrates should act in practice. Are we therefore in a situation where the gap between practice and politics is getting wider? Are

⁴ The latest legislation is, *inter alia*, 2008/334/JHA: Commission Decision of 4 March 2008 adopting the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II), OJ L 123, p.39.

the tools with the least restrictive regulations the most used and efficient because officers can interpret them according to their needs, unlike Europol for example which does not work well, but has a detailed Convention?⁵ Is it worth following a 'bottom-up' scheme through which what is required is developed informally, and once proven efficient is given legal support? Bottom-up strategies seem to offer an effective way of creating efficient tools for cooperation, but at the same time have to follow a lengthy and difficult path in order to work, especially when starting off (as they generally start on an informal basis) since for criminal matters a legal basis is required for judicial purposes. However, the more comprehensive study that was undertaken refers to at least two examples of bottom-up strategies that have been successful.⁶ These last themes bring some reflection on intermediate solutions that are needed to improve the cooperation framework. However, this is a decision for politicians and one that depends on the level of priorities each government invests in aspects of criminal cooperation.

This research shows that there is a gap between central and political levels (macro-level) and the work of the officers in the field (micro-level), which confirms the findings of Sheptycki (2002b), Reiner (1997), Ashworth (1998) and Anderson *et al.* (1995). It should be emphasised that when the research refers to effective cooperation, it refers to cooperation in conjunction with the users (such as the police). This problem needs consideration as there has been an inaccurate assumption that the macro-level and the practitioners in the field have the same aims. Political effectiveness is a completely different matter⁷, and one that this article does not explore. Returning to the 'gap' issue, the legal architecture and political considerations act in a sphere that does not usually meet the requirements necessary for smooth cooperation at the practical level.

Political influence

First, it was commented by interviewees from a variety of institutions and countries that the agreements in relation to cooperation signed at the central level are generally too broad and not specific enough, which results in the necessity for further documents to be agreed. As this example shows, it is important to note that it is not sufficient to have agreements as practical details are as much important and need to be sorted out. Agreements are signed at ministerial level and then progress to other ministries for implementation without involving any practitioners in the process, which explains the gap between the macro- and micro-levels, as the macro-level does not know how the process works in practice. Another similar point can be raised with regard to Spain. Because of the complex system of cohabitation between the two national police forces and the various autonomous forces, Spain created a system of coordination within the State Secretariat for Security for the two national forces. The police coordination model that the Spanish state has developed in order to improve cooperation amongst the different police forces is theoretically good, but has not shown any benefit, as was commented by several Spanish senior practitioners. The coordination body is composed of representatives from the macro-level, which means that the culture is not police-based, but 'politically' driven, with a culture and impetus of the civil service and the government rather than operational policing. The same situation applies to the Ministry of Justice in Spain (which also acts as the Central Authority⁸), as interviewees indicated that no magistrates actually work within the Ministry of Justice in Spain (Guille 2010b), which results in practical difficulties in

⁵ It must be noted that the Europol Convention has, since 1 January 2010, been replaced by the Council Decision of 6 April 2009 establishing the European Police Office (EUROPOL), OJ L 121 p.37.

⁶ See Sheptycki (2002b) and Gallagher (1998) for the European Liaison Unit and Maguer (2004) for the French-German border and French-German CPCC.

⁷ Such as rushing to sign conventions or treaties to show the reaction of politicians to public feelings.

⁸ Central body responsible for international matters at national level such as mutual legal assistance (as cited in Guille 2010b: 66).

making contact with practitioners from the judiciary when required. The Central Authority in the UK (UKCA, located within the Home Office) can also be mentioned in that context. Indeed, interviewees explained that the Home Office only employs administrators and therefore excludes practitioners from decision and negotiation processes. Another example is the National Criminal Intelligence Service (NCIS),⁹ which had its activities moving away from real-time needs in the field as it was considerably involved in information exchange with MI5.¹⁰ Furthermore, NCIS was mainly composed of civilians who were authorised to deal with crime-related matters and who were responsible for telling senior officers in the field what needed to be done. As one can understand and as was gathered by the interviews undertaken, NCIS was, as a consequence of this situation, poorly viewed by other agencies, such as the European Liaison Unit in Folkestone or local police forces. Therefore, the practitioners' motivation for contact and cooperation with NCIS was generally absent in the UK. One of the conclusions provided for such a development for this organisation was the UK's pragmatic approach, which can be illustrated here by the fact that civilians cost less for the state than police officers. Also, effort was put into making the European Arrest Warrant work as early as possible, since it is far cheaper than traditional lengthy extradition procedures. This is linked to a point that the article will come onto later in relation to the priorities a government focuses on and how they are implemented. The hierarchy here is being perceived as more important than relations with the operational world. As Anderson *et al.* (1995) noted, the negotiation level is unfortunately increasingly removed from practical needs.

Europol must also be mentioned in the context of political influence. Before tackling the over-present political factor related to Europol, it is essential to provide basic background information about Europol, as well as its power and relationship, and then discuss its governance to understand the overall picture. Europol is an EU law enforcement organisation. It began its full activities in July 1999 and was based on the Europol Convention of 26 July 1995.¹¹ Europol is a central unit that gathers competent authorities of all the Member States of the European Union under a single roof, with the aim of improving police cooperation in order to prevent and combat terrorism, unlawful drug trafficking and other serious forms of international crime. It supports the police forces of the various Member States, but does not replace them. It does this by gathering and analysing information about international organised crime alongside its main missions, which are the exchange of data, realisation of analysis, technical assistance and training. It delivers intelligence products, such as threat and risk assessments, situation reports, intelligence bulletins and policy reports, as well as operational products including operations reports, answers to requests, analytical reports, expertise, Joint Investigation Teams (JIT) and practical reports.

It is worth noting that three protocols have amended the Europol Convention, in 2000, 2002, and 2003. The first protocol, extending Europol's mandate to cover money laundering, entered into force in March 2007, as did the second protocol which strengthened Europol's powers in assisting the Member States by enabling it in particular to coordinate joint investigation teams (Article 3A of the Protocol¹²). The third protocol

⁹ NCIS no longer exists since 1 April 2006, when it ceased its activities and was integrated within the Serious Organised Crime Agency (SOCA). The information given on NCIS is also likely to happen with SOCA, though it cannot be ensured. As a consequence, the situation described might not be the case anymore with SOCA.

¹⁰ Interview with a foreign liaison officer in 2006; see also Sheptycki (2002c).

¹¹ Council Act of 26 July 1995, based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention), OJ C 316 of 27 November 1995, 2-32. It must be noted that the Europol Convention has been replaced since 1 January 2010 by the Council Decision of 6 April 2009 establishing the European Police Office (EUROPOL), OJ L 121 p.37.

¹² Council Act of 28 November 2002 drawing up a Protocol amending the Convention on the establishment of a European Police Office (Europol Convention) and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol, OJ C 312/1 of 16 December 2002.

amending the Europol Convention (the Danish Protocol of 27 November 2003¹³) covers overall changes (such as allowing direct contact between competent authorities and Europol as stipulated in Article 4.2. or authorising the Director of Europol to open an Analytical Work File without prior approval of the Joint Supervisory Board (JSB) and Management Board (MB), Article 12.1.). This came into effect on 18 April 2007. In view of the 'old' legal framework by which Europol was ruled - the Europol Convention -, updates had to be made for it to be more 'fit for purpose'. A further recent important change in amending Europol's legal framework has been the replacement of the Europol Convention on 1 January 2010 by the Council Decision of 6 April 2009 establishing the European Police Office (EUROPOL), as a result of the ratification of the Lisbon Treaty.

Europol is an organisation comprising a Management Board (MB), a Director, a Financial Controller and a Financial Committee, and is controlled by an independent Joint Supervisory Body (JSB), designed to ensure that the rights of data subjects are not violated. Europol is accountable to the Justice and Home Affairs (JHA) Council. The latter is responsible for the guidance and global control of Europol (Isaac 2002) and took decisions on the basis of unanimity until the Treaty of Lisbon entered into force, which was intended to ensure democratic control of Europol, but this could be a real hurdle to moving forward. Police accountability has always been achieved through national parliaments, as policing is an activity that is completely embedded in sovereign states. Until recently, control mechanisms were kept at the national level. However, this accountability model based on national sovereignty has been significantly affected by transnational policing; the conventional methods of governance are no longer sufficient (Bruggeman 2002; den Boer 2002; Loader 2002; Walker 2002; Sheptycki 2002a; Annull and Wincott 2002; Harlow 2002). Therefore, the common scholarly claim urges for new suitable mechanisms at supranational level to ensure proper accountability. Europol offers a 'multiple' form of accountability as set out in the work of Day and Klein (1987: 105), as it has various lines of accountability. Its internal accountability is simply organised as a bureaucratic hierarchy. However, its other types of accountabilities are more complex. Control in Europol has been problematic in every sense. First, Europol, being an intergovernmental structure, has suffered from a lack of political accountability. Each Member State was represented by its governing body and their actions - and through them those of Europol - could only be scrutinised by the 27 different national parliaments, where each had their own interests. Indeed, the domains dealt with in Europol are strongly linked to sovereignty, where the prerogative of each country lies. This aspect made negotiations and decisions complex as unanimity was required for any decision to be taken.¹⁴ Too many parties were involved, which led to a number of issues relating to the decision-making process, the number of languages used and the political priorities of the various countries, which in turn is an issue closely linked to the will that each country is prepared to show and invest in the cooperation process (and in Europol), as will be discussed later in this article.

The main point on which all scholars agree in relation to Europol is that it has lacked democratic control (den Boer 2002; Sheptycki 2002a; Bruggeman 2002; Monar 2001; Anderson *et al.* 1995; Walker 2002). Indeed, the Commission and the Parliament were only given minimal roles such as being an observer during the Management Board's meetings and being consulted when the Convention¹⁵ needed to be amended, respectively. This is far from the traditional roles that the two most important Community institutions usually have. However, this situation does not mean that there is no political influence, and this will be discussed in detail later. Another concern is the immunity protocols applied to Europol's officials, which are highly controversial and seen as overvalued and

¹³ Council Act drawing up, on the basis of Article 43(1) of the Convention on the establishment of a European Police Office (Europol Convention), a Protocol amending that Convention, OJ C 2 of 6 January 2004, 1-12.

¹⁴ This unanimity decision-making process no longer exists following the ratification of the Lisbon Treaty.

¹⁵ Article 34 of the Convention.

overestimated, as was stated by Jürgen Storbeck, former director of Europol, at a conference on 'The Future of Europol' in April 2007. Having Europol officials enjoy immunity for their actions could indeed lead to deficits in operational accountability such as judicial control if Europol were to be given operational powers (Guille 2010b).

Solutions to some of these issues could include relying more on the Management Board and have fewer than ten representatives, which would simplify procedures and cut delays in decision-making. With regard to the immunity protocols, the legal framework should be revised. Furthermore, the Chairman of the Europol Working Party added at the above mentioned 2007 conference that parliamentary control could change dramatically if Europol were 'communitarised' (which has happened when the Lisbon Treaty entered into force on 1 December 2009 as Europol became a European Agency). Therefore, under Lisbon now, qualified majority voting in the EU Council applies and decisions no longer have to be taken unanimously. Another change introduced by the Lisbon Treaty is that the European Parliament and the Court of Justice are given greater roles in scrutinising Europol's activities and setting its annual budget, therefore increasing democratic and judicial control, as mentioned in Guille (2010b). As these changes are still too recent, we will have to wait and see in the future the extent to which the impact of the Lisbon Treaty will address the issues of accountability in practice. Another solution for increased and efficient accountability might be the creation of an external monitoring body or supranational body (Elgie and Jones 2002¹⁶; Guille 2010b; Lorient 2005), which would be specifically linked to the judicial control aspect. However, the differences of judicial systems between the common and civil law countries and therefore the perceptions of the Member States have to be born in mind if such a body were to materialise.

Returning to the central theme, Europol has been referred to by several practitioners, as being 'a child of politics'. Informants in Anderson *et al.* (1995: 77) also said that "Europol was not looked at from a professional point of view, but was played as a political card". Most of the people interviewed agreed that Europol is far too political. One major issue concerns the Management Board (MB). It is only political with no chiefs of police represented. Indeed, the MB mostly comprises Ministers of the Interior or equivalent, for each country. Therefore, the problem in Europol is that the MB has little understanding of policing and subsequently the needs of the organisation. Another issue that must be noted as regards the MB is the large number of members, namely 60¹⁷, a number impossible to manage efficiently. Both issues lead to a waste of time and money. The approach to change should be incremental and could start by including chiefs of police within the MB. The role of the MB could then be redefined, such as whether it should represent Europol as an instrument of cooperation for police forces or whether it should represent the Member States along with their own political priorities.

With regard to Europol's work, there are many different priorities and objectives. For example, at the beginning of Europol, the Spanish priority was to integrate terrorism within the mandate of the organisation, a point on which the other countries did not agree. Different countries have different political priorities, which has an impact on the seriousness with which the Member States undertake certain functions depending on their interest (Harlow 2002). Another example of serious crime dealt with in Europol is drug trafficking, and there is no common legislation between EU countries to combat drug trafficking for the moment as was explained in the April 2007 ERA Conference on 'The Future of Europol'. Legislations vary amongst countries from flexibility to zero tolerance. In some countries certain quantities are seen as negligible and in others not, which can result

¹⁶ Cited in Menon and Weatherill (2002: 119).

¹⁷ Data given by the Chairman of the Europol Working Party at the conference on 'The Future of Europol' in Trier organised by ERA in April 2007.

in tensions between countries in Europol when files on such matters have to be dealt with. The attitude depends on political orders given at the top level.

The political factor is also present in the recruitment process. It was mentioned several times by senior officers that any change of government in one country often implies a change of police officers seconded to Europol. Other law enforcement officer interviewees from Spain and France confirmed that appointments are very political; they are 'digit appointments'¹⁸, in the sense that they are autocratically made decisions where someone is 'fingered' or 'volunteered' to go. Generally, these matters are based on similar political views between the government and the seconded Europol Liaison Officers (ELOs) or Europol staff, or because the officer appointed is not wanted in his or her country. All interviewees agreed on the fact that seconded officers, whether Europol officers or ELOs, are 'forgotten' in their own country and therefore end up being cut off from their 'community', as argued in Bartkowiak and Jaccoud (2008).

Interestingly, Davies (2001: 194) states that "the key issue in agency independence is the extent to which the agency's work is politically sensitive". The case of Europol illustrates this point very well, as its work affects one of the most sensitive domains of a country's sovereignty. The question is whether we want Europol as a political or as an 'operational' body. Political requirements are different from those in the field. We need to know what is required from Europol. At the moment, all the decisions made at MB level have taken little account of the needs required in the field by agents. Europol is reactive rather than proactive. It depends upon Member States being willing to use it, and for this it needs to be perceived as a useful and trustworthy mechanism in order to be fed with information. As Monar (2006: 503) illustrates, Europol, like Eurojust, is "heavily dependent on the provision of sufficient data from the respective national authorities as they only have very limited possibilities - and indeed capacities - to collect data of their own". However, governments want Europol to deal more with analysis than with operational matters (without giving proof of its usefulness), as an analytic instrument of cooperation to the Member States, which results in it failing to reach its objectives.¹⁹

The Europol Counter-Terrorism Director in 2007 explained that after the terrorist attacks of 11 September 2001, there was much political pressure on Europol to find agreements on information exchange with third countries and bodies, and that responses Europol received from prospective partners included that it would be difficult to enter into cooperation agreements because Europol's model of cooperation was too complicated and too much politics were involved. Practitioners had to be able to pick up the telephone and exchange information without wondering about the accumulation of agreements that do not include practical action provisions. It was even mentioned that strategic reports often happen to be politically influenced. Again, the gap between the political priorities and practical needs is too wide. If there is a will to make this type of institution work, there must be a sufficient level of linkage between political priorities and policing work.

Political priorities

Another central point involving political factors involves the priorities of governments.²⁰ If policies and instruments of cooperation are agreed at central or European level, but governments do not provide follow-up and do not invest in such activities, operational

¹⁸ Quotation from an informal discussion when working at Europol in 2003 and from a speech at a conference on 'The Future of Europol' in 2007 given by one of the former directors of Europol.

¹⁹ This use of Europol as a centre for analysis is in line with the increasing use of analysis and civilian analysts in domestic policing, particularly in the UK.

²⁰ This point is further argued in Guille (2009).

work is not possible (Gerspacher 2005; Benyon 1996; Rhinard, Ekengren and Boin 2006). It has been observed on the French-Spanish border that there was, generally speaking, no proper resources given to officers in the field, especially when one takes into account the high volume of work the officers deal with at the border. Computers were outdated, with networks frequently breaking down, on the Spanish and French side for the national police forces, and were totally non-existent for the *guardia civil*, a situation which contradicts the 2003 Schengen Evaluation for Spain undertaken at governmental level. In addition, inappropriate means of communication were provided, whereas Article 44 of the second Schengen Convention²¹ specifically states that appropriate means of telecommunication should be installed in border regions in order to facilitate police and customs cooperation. For example, as explained in Guille (2009), the issue of the telephone lines in the French-Spanish CPCC (located at the border on French territory) was significant as each police force had their own telephone lines, but all of them were French numbers, even for the Spanish authorities. The obstacle is clear as most of the police stations in Spain cannot dial out to international numbers, and are therefore unable to contact the CPCC - a major obstacle for enhanced cooperation. An important point to stress here is that of the telephone lines in the French-German CPCC (located on German soil) as each country was given national lines, for example, the French forces on German territory could be contacted by local French police stations as they had French numbers. Why does this difference exist? It is not due to its more strategic location, as the French-Spanish border is historically a strategic crossing point for trans-border crime such as tobacco smuggling, drug trafficking and illegal immigration. The key element in that case is governmental political priorities to invest in resources in relation to the political image they need to project. Whereas on the French-German border investment is needed to project a good image, on the French-Spanish border minimum standards seemed sufficient as the image is conveyed through the high volume of work. There is, generally speaking, a lack of will from the governments to improve the situation with regard to such major issues. More training in order to have specialised agents, more awareness about which instruments are available, appropriate means for action and common priorities are key elements to improving police and justice cooperation and to show the support governments provide to allow their national authorities to become adequately involved in the entire process.

Guille (2010b) agrees with the work of Elsen (2007) and Mogini (2001) arguing that instead of creating further instruments of cooperation, the Member States should learn to use in their daily work those that already exist. Many agreements have been developed at the macro-level and imposed from the top down without allowing field officers to trust them and therefore use them efficiently²², as no communication link existed between the macro- and micro-levels. As a consequence, this enforced top-down situation often involves practitioners taking parallel paths of action, which spread into an informal world (Sheptycki 2002b; Guille 2009, 2010b).

Beyond mandates: adapting the law to practice

A strong sense of 'mission' is part of the occupational culture of police officers (Sheptycki 1997; Reiner 1997; Skolnick 1966; Holdaway 1983) and we cannot therefore expect them to stay still. Despite the existence of problems at the macro-level, police officers were generally willing and prepared to work cooperatively. As several of the interviewees explained, which was also in line with the findings of the interviews carried out by Anderson *et al.* (1995) and Santiago (2000), police officers are prepared to do anything

²¹ Convention implementing the Schengen Agreement of 14 June 1985 between the Government of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, OJ L239, 22 September 2000, pp.19-62.

²² See Guille (2009) and Guille (2010a) for further details.

even when certain rules need to be bypassed, in order to get a response to solve problems. This is where one can see the gap between decisions made by rule-makers and what needs to be done by officers in practice. Rule-makers are usually far from understanding the realities of police work, but expect high 'results' imposing rules of law restricting police action. As a result, as we cannot expect the law enforcement forces to operate with "their hands tied behind their backs" (Ashworth 1998: 79), these rules are not always followed faithfully. Indeed, several officers explained that they often need to 'adapt the law in practice' in order to work efficiently. Some illustrative examples are taken from the observations undertaken in the field, as well as in the structures of cooperation such as CPCCs and Europol.

At the French-Spanish border, under the Schengen Convention, controls and police checks can only be occasional and last for a limited period of time. However, this was not applied in practice when the observation took place. It was very common to find police forces undertaking controls every day for several hours when it is, in fact, not allowed. When the situation was questioned during informal discussions, in particular what they thought about this point, police officers always stated that they needed to adapt the law to practice, since if they relied on legislation alone they would not be allowed to take any action. The gap between practice and policies/politics is very wide and almost all police cooperation and data exchange are discussed in relation to specific incidents, as the practices that they adopt are not stipulated in policies, legislations and/or manuals. According to the interviewees, the main issue concerns the exchange of information, in particular whether the information exchange has a legal basis and whether the information exchanged will be valid for inclusion in a judicial file. These questions have been asked by many officers, for example, when they are not sure if information going through the CPCC can be included in a judicial investigation file. A senior police officer in the French-German CPCC stated that ultimately it all depends on individual interpretation of the law. On the one hand, there is no clear prohibition of exchanging information²³, but on the other it is stated that the only legal mean to exchange information for inclusion in a judicial file has to be made through international *commissions rogatoires*²⁴, otherwise the file could be rejected as invalid. However, he added that many exchanges are not made through these *commissions rogatoires*, with the specific exception of very complex and important investigations where no risk could be taken. If the data involved a small piece of information, nobody would question its origins and therefore police officers would do it that way instead of using more formal channels. It is, for example, very common to receive information such as a telephone number for a specific person through a colleague, which will appear in the judicial file. This information then enables the officers to proceed with the investigation and, ultimately, nobody questions how the phone number has been provided. Another police officer also said: "Let's admit that some information is not received 'formally'. But, who am I to make the observation and tell the senior officers who have worked that way for years that they need to change? If the needs exist, there is a lack in the texts". The senior police officer from the French-German CPCC added that the question was whether governments want police officers to take action or not and go further in the investigations.

²³ Information here does not refer to intelligence information, but to evidence that will be included in a judicial file. It is important to note that the Hague Programme, which was the work programme for the area of Justice and Home Affairs, contained measures to strengthen the exchange of information with the principle of 'availability', which requires forces in one country to cooperate with intelligence gathering in another country, when requested to do so, but also to offer intelligence even when not requested to do so. The Stockholm Programme, which has succeeded to the Hague Programme, is the new work programme in the area of Justice and Home Affairs and was adopted on 11 December 2009 (the Hague Programme has now expired). It will define the framework for EU police and customs cooperation, rescue services, criminal and civil law cooperation, asylum, migration and visa policy for the period 2010–2014.

²⁴ The term refers to a request addressed by a judicial authority in country A to a judicial authority or equivalent in country B to request that the authorities of country B proceed with certain actions, such as a house search in relation to a criminal investigation that country A is undertaking.

Officers in another country have also admitted that they had searched cars without having any judicial authorisation (although this is the procedure in their country), but it had to be done as suspicion of finding illegal narcotics was strong. If drugs were to be found in such circumstances, the police officers concerned would have to take special care as to how their report is written; otherwise, judicial proceedings would not be authorised. Such findings on how law is adapted in practice on a regular basis are original as they are not usually reported in the literature and were of utmost importance in this research in order to analyse what happens in reality. These 'informal' actions from police officers were regarded as necessary in many cases. However, they are not to be applauded as they can easily infringe data protection laws²⁵ for example. More attention should be paid to enabling legal action which would allow suspects to have their rights respected. However, at the moment, the infringements are inevitable as no initiative is being taken at the macro-level to correct the situation.

Work methods are also adapted in formal structures for cooperation. CPCCs have been created with the aim of facilitating cooperation and supporting field officers only in the region that is stipulated in each of the CPCC agreements. However, there is an extensive network of CPCCs that has developed as CPCCs have proved their worth in the field. Therefore, if the Spanish authorities need some information from their Italian counterparts, they will often go through the French authorities in the French-Spanish CPCC. Those in turn will contact their French colleagues in the French-Italian CPCC, who will then ask their Italian counterparts. Other countries which do not have CPCCs also use this network to get relevant information (for example, Andorra and the UK). This is a process of support for foreign colleagues, which should not occur according to stipulations in the texts. However, interestingly, it has been confirmed in the course of this research project that, although central authorities were not pleased with this increasingly important networking system of information exchange through CPCCs, the high volume of exchanges demonstrated that this network of CPCCs responded to real needs, and therefore the central level informally allowed this information exchange to take place to a certain extent. This highlights well the bottom-up style of formalisation that can occur, driving the micro-level towards the macro-level in order to match the requirements of fieldwork (Gallagher 1998; Maguer 2004; Sheptycki 2002b).

Gerspacher (2005) and Santiago (2001) have both demonstrated in their research that Europol needs to act beyond its mandate to be able to work more efficiently and gain trust from the national police forces of the Member States. The findings of the empirical research in this article confirm that this is the case. Theory, as stipulated in the Europol Convention, revealed that the rules that had to be followed in order to exchange information were not appropriate for the police officers' pragmatic and realistic approach. Often, direct contacts were allowed between police officers at national level and Europol without the involvement of the Europol liaison officers and/or the Europol National Units (ENUs) as required.²⁶ Furthermore, Europol liaison officers of some Member States allowed Europol to be used as a channel through which international *commission rogatoires* could transit, which is also something that is not in Europol's remit. A similar issue occurred within Eurojust, which, this research project revealed, has also often been involved in bilateral cases dealing with mutual legal assistance matters instead of multilateral complex cases. Also, it is of importance to note that, for example, the UK is one of the countries that specifically uses Europol for bilateral exchanges (such as checking vehicle registration numbers), whereas Europol was not created with that objective in mind. The UK's attitude

²⁵ Legal provisions on data protection have recently been made more robust by Council Framework Decision 2008/977/JHA, OJ 2008 L350/60.

²⁶ It is worth mentioning that this point was made before the Danish Protocol entered into force in April 2007, which amends the Europol Convention and covers overall changes, such as allowing direct contact between competent authorities and Europol as stipulated in Article 4.2.

in that context is to adapt the instrument (Europol) to its needs. This probably happens because the UK is not a full Schengen member and has no CPCCs and therefore has less bilateral agreements and structures of cooperation, compared to other European countries, in order to be able to exchange information. British officers would therefore decide to go through Europol contacting their colleagues²⁷ rather than have to go through their central agency (NCIS²⁸), which would take even more time and which is historically not entirely trusted in the UK, as it is considered by officers as being too political and having very different objectives from the police forces, as seen above.

The most important question Member States have to ask themselves concerns the future that they want for Europol. Do they want an instrument which is merely another post box for simple real-time information or do they want to go further? The first idealistic proposal for Europol has still not been reached and the main impression is that Europol is not being used to its full capacity. Why is this so? The political factor anchored within Europol and the reality of the needs in the field are definitely creating a gap which is too wide to allow trust and better cooperation. The macro- and meso-levels need to take into account the micro-level, so that appropriate action can be taken. However, this matter can only be resolved by the macro-level admitting that there is too much political input within the institution and that a better balance needs to be found with fieldwork considerations. Nevertheless, it is unlikely that the situation will improve. Since the observation period in 2003 and the updated informal discussions revolving around Europol in 2007, a few developments have occurred - and some, such as the Lisbon Treaty, might have quite an important impact. However, according to the updates received from some contacts used in the more comprehensive research, not much has changed at the moment, and definitely not Europol's important political dimension.

Conclusion

Overall, it does not seem that, over the years, the existing gap between the macro- and micro-levels that characterises Europol has been tackled. Even worse, this situation does not seem to worry the macro-level. As has been discussed in Guille (2010a), Schengen, the CPCCs, the ELU and the bilateral liaison magistrates are the instruments that have been recognised by practitioners as the most satisfactory with regard to matching needs, efficiency, and usefulness. They are also less politically controlled than other instruments. Equally, Schengen has been agreed on at macro-level and has a SIRENE manual describing its practical operation, but with which practitioners do not seem to be familiar. The bilateral liaison magistrates are in a unique position regulated by bilateral agreements, but once more, no formal rule in relation to their role in practice (exchange of information, relation with foreign national magistrates, etc.) is stipulated anywhere, in contrast to Europol whose functioning is detailed in its Convention.²⁹ There has been too much focus on legality and structure and too little on practice (uniforms to be worn in a foreign country, status of the officer working in a structure based on the other side of the border, etc.). Formal structures are always about information exchange, but no emphasis is given to the practical needs.

In addition to the aim of getting information quickly and efficiently, it is necessary that the legal side be addressed in the right proportion; otherwise, some significant efforts could be wasted. For example, a judicial file could be rejected for not containing judicially valid evidence and data. In that context, the CPCCs seem to be an interesting intermediate solution between the macro/meso- and micro-level for cross-border activities and

²⁷ Since the Danish Protocol of 2007 mentioned earlier, direct contact is now allowed.

²⁸ NCIS no longer exists; it has been integrated within SOCA since 1 April 2006.

²⁹ As mentioned earlier, the Europol Convention has now been replaced by the Council Decision of 6 April 2009.

cooperation. There are clearly discrepancies between real needs at borders (ELU/CPCC) and national level interests (Europol, Eurojust, international *commissions rogatoires*, etc.). This situation may be due to the fact that, at the border, needs are more obvious and made tangible. There are more specialised practitioners working at the border for different types of criminality (immigration, petty thefts, drug trafficking, etc.) and foreign practitioners know each other, with better understanding of the needs required. Most importantly, the field officers working in the CPCCs give information to other field officers and are therefore seen as being at the same level, whereas central levels are seen as bureaucrats who do not understand real work in practice.

Politicians must learn from experience. It is not the most regulated and complicated structure that yields most cooperation. Some instruments with less restrictive regulations can achieve more as they are more accessible and flexible to everyone. As Massé (1999) argues, sometimes the least organised system is the most efficient one. There is a lack of push from politicians to translate instruments into practice and address questions that matter in the field.

References

- Anderson, M. *et al.* (1995). *Policing the European Union: Theory, Law and Practice*. Oxford: Clarendon Press.
- Arnall, A. and Wincott, D. (2002). *Accountability and Legitimacy in the European Union*. Oxford: Oxford University Press.
- Ashworth, A. (1998). *The Criminal Process: An Evaluative Study*, 2nd edition. Oxford: Oxford University Press.
- Bartkowiak, I. and Jaccoud, M. (2008). 'New Directions in Canadian Justice: From State Workers to Community "Representatives"', in J. Shapland (ed.), *Justice, Community and Civil Society*. Cullompton: Willan Publishing, pp. 209-234.
- Benyon, J. (1996). 'The Politics of Police Co-operation in the European Union', *International Journal of the Sociology of Law*, 24 (4), pp. 353-379.
- Bruggeman, W. (2002). 'Policing and Accountability in a Dynamic European Context', *Policing and Society*, 12 (4), pp. 259-273.
- Davies, A.C.L. (2001). *Accountability. A Public Law Analysis of Government by Contract*. Oxford: Oxford University Press.
- Day, P. and Klein, R. (1987). *Accountabilities: Five Public Services*. London and New York: Tavistock Publications.
- Den Boer, M. (2002). 'Towards an Accountability Regime for an Emerging European Policing Governance', *Policing and Society*, 12 (4), pp. 275-289.
- Elsen, C. (2007). 'From Maastricht to The Hague: The Politics of Judicial and Police Cooperation'. Paper delivered at the ERA Summer Course on 'European Criminal Justice' in Trier, 3-7 July 2006. *ERA Forum*, 8, pp. 13-26, published on-line on 27 March 2007.
- Gallagher, D.F. (1998). *European Police Co-operation: Its Development and Impact Between 1967-1997 in an Anglo-French Trans-Frontier Setting*. Unpublished PhD Thesis. University of Southampton.
- Gerspacher, N. (2005). 'The Roles of International Police Cooperation Organizations: Beyond Mandates, Towards Unintended Roles', *European Journal of Crime, Criminal Law and Criminal Justice*, 13 (3), pp. 413-434.
- Guille, L. (2009). *Police and Judicial Cooperation in Europe. Europol, Eurojust and the European Judicial Network: Master Pieces of the European Union's Puzzle in Justice and Home Affairs*. Unpublished PhD Thesis, University of Sheffield.

- Guille, L. (2010a). 'Police and Judicial Cooperation in Europe: Bilateral Cooperation versus Multilateral Cooperation', in F. Lemieux (ed.), *International Police Co-operation: Emerging Issues, Theory and Practice*. Cullompton: Willan Publishing, pp. 25-41.
- Guille, L. (2010b, forthcoming). 'The Proliferation of Parallel Tracks in Police and Judicial Cooperation in Europe: The Current 'Chaos'', *Journal of Police Studies*, 16, pp. 57-74.
- Harlow, C. (2002). *Accountability in the European Union*. The Collected Courses of the Academy of European Law, 4, Oxford: Oxford University Press.
- Holdaway, S. (1983). *Inside the British Police: A Force at Work*. Oxford: Basil Blackwell.
- Isaac, G. (2002). 'Le nouvel Office Européen de Police', *Petites Affiches, le Quotidien Juridique*, 113, 7 June 2002.
- Jenkins, L. (2001). 'The European Police Force: A New Threat to Britain'. *Europe Watch*. Available at <http://www.europewatch.co.uk/europol/>
- Loader, I. (2002). 'Governing European Policing: Some Problems and Prospects'. *Policing and Society*, 12 (4), pp. 291-305.
- Loriot, F. (2005). 'Accountability at the United Nations: In Need of a Genuine External Enforcement Body', in C. de Cooker (ed.), *Accountability, Investigation and Due Process in International Organizations*, International Institute of Administrative Sciences, Nijhoff Law Specials, 63, Leiden, Boston: Martinus Nijhoff Publishers, pp. 68-96.
- Maguer, A. (2004). *Les frontières intérieures Schengen. Dilemmes et stratégies de la coopération policière et douanière franco-allemande*. Freiburg : Iuscrim.
- Massé, M. (1999). 'Les difficultés pratiques de la coopération judiciaire pénale', in Ministère de la Justice (ed.), *L'espace judiciaire européen*. Actes du colloque d'Avignon, Paris: La Documentation Française, pp. 104-107.
- Menon, A. and Weatherill, S. (2002). 'Legitimacy, Accountability, and Delegation in the European Union', in A. Arnall, and D. Wincott (eds), *Accountability and Legitimacy in the European Union*. Oxford: Oxford University Press.
- Mogini, S. (2001). 'Point de vue. La reconnaissance mutuelle des décisions pénales', in P. Rancé and O. de Baynast (eds.), *L'Europe judiciaire: enjeux et perspective*. Paris: Dalloz, pp. 81-87.
- Monar, J. (2001). 'The Dynamics of Justice and Home Affairs: Laboratories, Driving Factors and Costs', *Journal of Common Market Studies*, 39, pp. 747-760.
- Monar, J. (2006). 'Cooperation in the Justice and Home Affairs Domain: Characteristics, Constraints and Progress', *Journal of European Integration*, 28 (5), pp. 495-509.
- Nogala, D. (2001). 'Policing Across a Dimorphous Border: Challenge and Innovation at the French-German Border', *European Journal of Crime, Criminal Law and Criminal Justice*, 9 (2), pp. 130-143.
- Punch, M. (1979). *Policing the Inner City*. London: Macmillan.
- Reiner, R. (1997). 'Policing and the Police', in M. Maguire, R. Morgan, and R. Reiner (eds.), *The Oxford Handbook of Criminology*, 2nd edition. Oxford: Oxford University Press, pp. 997-1049.
- Rhinard, M., Ekengren, M. and Boin, A. (2006). 'The European Union's Emerging Protection Space: Next Steps for Research and Practice', *Journal of European Integration*, 28 (5), pp. 511-527.
- Santiago, M. (2000). *Europol and Police Cooperation in Europe*, Criminology Studies, 11, Lampeter: Edwin Mellen.
- Sheptycki, J.W.E. (1997). 'Faire la police dans la Manche: L'évolution de la coopération transfrontalière (1968-1996)', *Cultures & Conflits*, 26-27, pp. 93-121.
- Sheptycki, J.W.E. (2002a). 'Accountability across the Policing Field: Towards a General Cartography of Accountability for Post-Modern Policing', *Policing and Society*, 12 (4), pp. 323-338.
- Sheptycki, J.W.E. (2002b). *In Search of Transnational Policing: Towards a Sociology of Global Policing*. Aldershot: Ashgate.

- Sheptycki, J.W.E. (2002c). 'United Kingdom', in M. den Boer (ed.), *Organised Crime: A Catalyst in the Europeanisation of National Police and Prosecution Agencies?* Maastricht: European Institute of Public Administration, pp. 507-559.
- Skolnick, J. (1966). *Justice without Trial*. New York: Wiley.
- Walker, N. (2002). 'Policing and the Supranational', *Policing and Society*, 12 (4), pp. 307-321.
